Nos. 89-556, 89-557 and 89-771

FILED
JAN 2 1990
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

STATE OF LOUISIANA, *ex rel.* WILLIAM J GUSTE, JR., *et al.*,
Appellant

v.

UNITED STATES OF AMERICA

BOARD OF SUPERVISORS OF SOUTHERN UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE,
Appellant

v.

UNITED STATES OF AMERICA

STATE OF LOUISIANA *ex rel.* CHARLES E. "BUDDY" ROEMER, III, *et al.*,
Appellant

v.

UNITED STATES OF AMERICA

On Appeal from the United States District Court for the Eastern District of Louisiana

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RESPONSE TO MOTION TO DISMISS

THOMAS N. TODD
ATTORNEY
GRAMBLING STATE UNIVERSITY
ALUMNI ASSOCIATION
One North LaSalle Street
Chicago, Illinois 60602
(312) 236-9476

BEST AVAILABLE COPY

Nos. 89-556, 89-557, and 89-771

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

STATE OF LOUISIANA, EX REL. WILLIAM J. GUSTE, JU., ET AL., APPELLANT

v.

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BOARD OF SUPERVISORS OF SOUTHERN UNIVERSITY AND AGRICULTRUAL AND MECHANICAL COLLEGE, APPELLANT

v.

UNITED STATES OF AMERICA

STATE OF LOUISIANA EX REL. CHARLES E. "BUDDY" ROEMER, III, ET AL., APPELLANT

v.

UNITED STATES OF AMERICA

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

RESPONSE TO MOTION TO DISMISS

QUESTION PRESENTED

The question as presented by the United States is deemed adequate for purposes herein.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

No. 89-556

STATE OF LOUISIANA, EX REL. WILLIAM J. GUSTE, JR., ET AL.,
APPELLANT

v.

UNITED STATES OF AMERICA

No.89-557

BOARD OF SUPERVISORS OF SOUTHERN UNIVERSITY AND
AGRICULTRUAL AND MECHANICAL COLLEGE, APPELLANT

v.

UNITED STATES OF AMERICA

89-771

STATE OF LOUISIANA EX REL. CHARLES E. "BUDDY" ROEMER, III,
ET AL., APPELLANT

v.

UNITED STATES OF AMERICA

ON APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

RESPONSE TO MOTION TO DISMISS

NOW COMES the GRAMBLING STATE UNIVERSITY ALUMNI ASSOCIATION, through its counsel, THOMAS N. TODD, and hereby states that it joins the MOTION TO DISMISS the appeals in 89-556, 89-557 and 89-771, filed by the United States, December 1989, for the reasons stated therein.

Further, that for the purpose of this motion, the Statement, Argument and Conclusion of the United States are also adopted.

Respectfully submitted,

/S/
THOMAS N. TODD
Attorney for Grambling STATE
UNIVERSITY ALUMNI ASSOCIATION

December 1989

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been forwarded to all counsel of record by placing same in the U.S. Mail, postage prepaid and properly addressed on this 3rd day of March, 1989.

/s/ Dermot S. McGlinchey
DERMOT S. McGLINCHEY

EXHIBIT A

STATE OF LOUISIANA
OFFICE OF THE GOVERNOR
BATON ROUGE
70804-9004

BUDDY ROEMER
GOVERNOR

Post Office Box 94004
(504) 342-7015

January 10, 1989
FOR IMMEDIATE RELEASE
CONTACT: Karyn Noles

ROEMER NAMES COMMISSION ON THE AVAILABILITY OF COLLEGE EDUCATION FOR QUALIFIED YOUTH

Governor Buddy Roemer today announced he has appointed the commission on the Availability of College Education for Qualified Youth in Louisiana.

This study commission will assess the feasibility of methods or programs designed to help Louisiana's young people achieve higher levels of education.

The commission will be chaired by Mr. Patrick Taylor, Chairman and CEO, of Taylor Energy company in New Orleans.

"Public high school education has been provided to the youth of Louisiana since 1844 and now some 40,000 students graduate from Louisiana public high schools every year. More than half of these students do not apply for or attend college due mainly to financial limitations," said Governor Roemer.

"We must begin turning this state around by building an educated workforce. This commission will look at ways to provide qualified students with the opportunity to obtain a college education. An educated workforce means more jobs."

The first meeting will be held at noon Tuesday, January 10, at the Baton Rouge Hilton. The public is invited to attend.

EXHIBIT B

STATE OF LOUISIANA
OFFICE OF THE GOVERNOR
BATON ROUGE
70804-9004

BUDDY ROEMER
GOVERNOR

Post Office Box 94004
(504) 342-7015

GOVERNOR'S COMMISSION ON THE AVAILABILITY OF COLLEGE EDUCATION FOR QUALIFIED LOUISIANA YOUTH

Dr. Wilmer Cody, State Superintendent of Education

Stephanie Desselle, Assistant Chief of Staff to Governor Roemer for Education

State Senator Allen R. Bares, Lafayette

State Representative Jimmy D. Long, Natchitoches

Dr. Joseph B. Johnson, President of Grambling University

Dr. Gregory M. O'Brien, Chancellor of the University of New Orleans

Jack A. Andonie, M.D., Chairman of the Board of Supervisors; Louisiana State University

Jackie Ducote, Director of the Education Council; Louisiana Association of Business and Industry

Jo Ann Kellog, Former President of Louisiana School Boards Association

Louis Pendleton, D.D.S., Former Member of LSU Board of Supervisors

Donald R. Mintz, New Orleans Attorney

Roy M. LeBlanc, Member of Board of Elementary and Secondary Education for the First Congressional District

COMMISSION ON THE AVAILABILITY OF COLLEGE EDUCATION FOR QUALIFIED LOUISIANA YOUTH ("TAYLOR COMMISSION")

THE PROBLEM

During the early 1840's the United States concluded a war with Mexico and was facing severe Indian problems in the Western Territories. Eli Whitney's cotton gin was about to revolutionize the cotton industry and steam powered river travel was just over the horizon. The economy was beginning a transformation from agricultural to industrial and our State determined that providing a public high school education was a necessity and a governmental responsibility.

For more than a century then, American children have been assured a high school education. Louisiana took this step in 184 and was the first southern state to do so. However, since then scientific and technological breakthroughs and accomplishments have made our world exceedingly more dangerous and complicated. Yet there has not been an equal increase in the amount of guaranteed education we provide all our children.

Consequently, college education is not readily available to the large majority of our young people. In Louisiana it is estimated that out of some 40,000 public high school graduates annually as many as 5,000 have the capacity to qualify for university admission, but are unable to attend because of a lack of funding. Society ad the State suffer, as well as our young people.

THE PROPOSAL

It has been proposed to provide every Louisiana youth who qualifies, but does not have the means, the opportunity to obtain a college education with all the motivation and aspiration that that will mean. Achievement of this goal will:

- Enhance the image of this State in a quantum advancement as the first of fifty states to establish a twenty-first century education system.

- Allow Louisiana to lead the way to a more competitive America by increasing the brain-power base of our country.
- Attract new industry, investment and residents.
- Retain Louisiana youths as an educated citizenry and work force for Louisiana.
- Enhance the public and private sector support of all phases of education.
- Correct the inequities of the present system whereby taxpayers' dollars are used to provide a higher education (including remedial courses) to students whose only qualification is their parents' ability to pay a portion of the total cost of their education - tuition, room and board.
- Greatly improve the utilization of our existing lower, middle and high school educational system by providing a valid and real reason for greater effort on the part of students, parents, teachers and administrators.
- Properly utilize four-year level institutions of higher learning.

In summary, remove the only remaining real barrier to a truly free and open equal opportunity society.

THE CHARGE

This Commission is therefore constituted and charged with consideration of the above proposal to insure that college education be made available to all Louisiana high school graduates who qualify academically, but who do not have the financial means necessary. Your deliberations should include the basic proposal, as well as, but not limited to the following:

- The necessary steps for insuring that high school graduation and college entrance requirements are strengthened so that these accomplishments are meaningful.
- The requirements for students' eligibility in such a program as is proposed, both academically and financially.

- The projected number of students that fall in the category of meeting academic requirements and being qualified, but are unable to attend college because of lack of financial means.
- The projected cost of providing such education to these students.
- The use of current scholarship programs as complimentary.
- The role of the State in funding such a proposal.
- Remedial education in colleges and the elimination of such education as being wasteful and duplicative.
- The utilization of current funds, now being provided for remedial education, for the implementation of the basic proposal.
- Implementation of this proposal through the public and the Legislature.
- Any additional factors that are determined to bear.

Subsequently, a report of your conclusions and appropriate recommendations should be made as early a possible.

Exhibit C

EDUCATION BOARDS ENDORSE COLLEGE GUARANTEE PLAN

Capitol news bureau

The policy-making boards for both higher education and elementary/secondary education Thursday endorsed a plan that the authors says will guarantee a college education to all Louisiana citizens.

At its joint meeting, the Board of Regents and the Board of Elementary and Secondary Education gave its backing to the plan being promoted by New Orleans oilman Patrick Taylor.

The plans has three basic ideas, Taylor told the boards.

First, he said, all four-year colleges must adopt minimum admission standards. Those standards should be along the lines of a 2.5 grade-point average on a high school core curriculum, Taylor said.

By forcing high school students to become better prepared for college, Taylor said universities would be able to reduce the amount of remedial education being done there. That would save about $12 million a year, he said.

Each student who qualifies through the admission standards and whose family makes less than $300,000 a year would be guaranteed a college education. Taylor said because the university tuition and fees, along with room and board, would be waived.

"The benefits to the state of Louisiana would be beyond calculation," Taylor said.

Louisiana would become the first state to extend an education guarantee beyond 12 years to 16 years and, in the process, would create a better-educated work force able to attract industry to the state, Taylor said.

He estimated about 5,000 students would take advantage of the program in its first year. At an average cost of $4,000 per student, the program would cost about $20 million, Taylor said.

"But I don't see it as cost. My estimation of cost is the cost of welfare, the cost of dropouts . . . the cost of incarceration. It costs four to five times that to keep someone in prison," Taylor said.

He said that by giving all students the opportunity to go to college, motivation of students would increase and so would the involvement of parents, who would see a better life for their children.

"Attendance would be based on a person's ability to learn and not on their parent's ability to pay," Taylor said.

Taylor said he got the idea after promising a group of New Orleans students a college education if they took a core curriculum and earned a B average. The students had all failed at least once and most of them twice, Taylor said.

He said the change in their attitude has been phenomenal and the students today are eagerly participating in their classes and have the help of both teachers and parents.

Exhibit D

'TAYLOR PLAN' IS THE KEY

New Orleans

It is very encouraging to read front page articles on Louisiana education reform efforts. Patrick Taylor's idea of eliminating economic barriers and basing college opportunity on academic ability is the key to unlocking the total potential of every child.

The plan will provide a level of expectation for students who are normally written off as poor achievers. It creates an incentive to excel and stimulates motivation. Suddenly secondary teachers become college prep teachers and parents begin to realize that a college education for their children is not unrealistic.

This plan is not a scholarship, grant, loan or gift. It provides equal opportunity to all who qualify.

On Dec, 15, 1988, both the Board of Regents and the Board of Elementary and Secondary Education unanimously endorsed the "Taylor Plan." Many other officials have expressed highly favorable views, including five permanent university presidents or chancellors, four governors, several state representatives and senators and the Chamber (New Orleans and the River Region).

After meeting with a group of the original "Taylor Kinds," Gov. Roemer immediately decided to appoint a high-level commission to further develop and discuss implementation feasibility.

We expect 5,000 Louisiana students to qualify the first year. The cost this first year is less than 1 percent of Louisiana education expenditures. We suggest that cost to Louisiana is not the expense of this program, but rather cost is the ever increasing expense of welfare, unemployment, prisons and crime.

Education is a foundation on which Louisiana can build a new and expanded economic base. We must give all children in Louisiana the tools necessary to explore and reach their total potential.

Removing economic barriers to higher education is the key.

Wilmer S. Cody
State Education Superintendent
Roy M. LeBlanc
Member, BESE

Exhibit E

BREAKING THE EARLY BONDS - OF FAILURE

A recent study undertaken by the New Orleans Council for Young Children in Need concludes that early intervention is the solution to the cyclical trap of failure engendered by poverty in so many of New Orleans children. With almost half of New Orleans children born into poverty, some 45 percent of those under the age of five are "in need," not receiving proper nutrition or education.

Members of the Business Task Force on Education, Inc. participated in the study, make public several months ago. The report is only the first phase of work.

The report identifies problems endemic to poverty, leading to statistics such as a 60 percent failure rate on the California Test of Basic Skills (CTBS reading and math tests); with less than 50 percent completing public high school. Recommendations include increased sex education programs for preteens and teens; schools for pregnant teens with on-site childcare; and easily intervention program for the three and four-year olds.

The report is available at no cost by contacting Sally Hays, Business Task Force director, at 527-6945.

'THUMBS UP' ON TAYLOR'S EDUCATION PLAN

The Board of Directors of the Chamber unanimously endorsed the education plan offered by Patrick F. Taylor, president and chairman, Taylor Energy Company, for the reform of the state's system of higher education. Presented at the Chamber's January Board meeting, Taylor's three point plan is as follows:

1. Raise admission standards at four-year state colleges and universities to require completion of 17.5 credits of core curricula study, a 2.5 grade point average, and a score of 18 on the American College Test (ACT). These requirements are considered the minimum qualifications for students expecting to complete a four-year course of study. They should take effect in 1992, allowing high school students four years to prepare.

2. Phase out remedial education programs at these institutions and apply the funds saved to university-level instruction. Remedial instruction for students desiring to enter a four-year institution is better provided at junior and community colleges, which would continue to be open admission, free tuition schools.

3. Provide a full waiver of tuition, room and board at some or all of those four-year institutions to qualified Louisiana students whose families earn less than $30,000 annually. The waiver should be adopted immediately to prevent any further loss of qualified students.

CODY BACKS FREE COLLEGE PROPOSAL

by Mark Lambert
Advocate state writer

[first and second paragraphs omitted in printing]

The idea came from New Orleans businessman Pat Taylor, who runs an education program in New Orleans for disadvantage students. Cody said such a program would give free tuition, room and board to any graduate of a Louisiana high school who wants to attend a Louisiana public college, provided that student meets certain financial requirements.

Cody said the program would be costly, "but what better could we spend it on?"

The Superintendent said Gov. Buddy Roemer is giving the proposal "serious consideration" and may shortly convene a task force to study the idea.

"It's hard to know how many students would go under this kind of program," Cody said after his speech in the convention delegates. "But I certainly think it's a worthwhile thing to study."

He noted that one year's worth of tuition, books, room, board and spending money at a Louisiana university costs about $6,000, "which is more than many families can afford." For a student to be eligible for the program, his family's annual income could not exceed" a ballpark figure of $30,000," Cody said.

Cody's address came on the opening day of the Louisiana Federation of Teachers annual convention. Roemer is scheduled to address the delegates on Monday.

Cody touched on several education topics Sunday, including the need to reduce the state's 10 percent dropout rate which is the highest in the country.

"I keep thinking about . . . those first graders, who will graduate in the year 2000, and what life will be like for them," Cody said. "Just reducing the dropout rate a little bit, however important that might be,

is not enough. We need *** dropouts by 2006," the year that children born this year will be scheduled to graduate from high school.

Because society is becoming increasingly technological and jobs are requiring more education, "there will be almost no room for high school dropouts by the year 2000," Cody said. He noted that the year 2000 "used to sound so far away, but it's only 12 years away now."

Cody the state's first appointed superintendent of education, said the road to reducing the dropout rate and raising academic achievement may be easier in the next decade than it has been in the past because "the climate's changed."

He said Roemer's top priority is education, and Cody said his department is working closely with the state Board of Elementary and Secondary Education "with educational issues, not political ones."

He said Louisiana must take a more active role in helping not only students but their families, too, he said.

Cody proposed that the state begin a "combination program, eventually for all parents," that would educate parents of young children on the best way to achieve educational success for their children.

"I think we would invest the state's money very, very wisely if we had a parent education program," he said. Such a program would teach parents about child nutrition, language development and motor skills of children, Cody said, noting that a similar program is under way in Missouri.

Cody also blasted his own department's stringent regulations and policies that some individual school districts say are too restrictive.

The state's educational bureaucracy, has grown "far beyond reason," he said.

"We've got to stop telling you have to do your jobs," he told the cheering teachers.

Cody said the state should seriously consider either extending the school year for children or start funding a summer school program for *** students. The state now mandates that school systems *** a minimum of 175 instructional days a year for all students.

"If we're talking about a *** dropout rate, 175 or 180 (days) isn't enough," he said. He noted that some European and Asian countries keep their children in school for 200 to 250 days a year.

And, instead of retaining students for a year, which Cody called "a waste of money," the state instead should fund summer school programs for low-achieving students, he said.

"I'd put that money into something to help kids do better," he said.

Exhibit G

Education Chief Endorses Free College Education Idea

by the Associated Press

Slidell (AP) - Giving college educations to students who otherwise couldn't afford them would cost the state about$250 million a year, but it would be worth it, says Education Superintendent Wilmer Cody.

"What better could we spend it on?" he asked Sunday during a speech to the Louisiana Federation of Teachers, which Gov. Buddy Roemer addressed on Monday.

"It's hard to know how many students would go under this kind of program." Cody said after his speech to the convention delegates. "But I certainly think it's a worthwhile thing to study."

The superintendent said Roemer is giving the proposal serious consideration and may soon convene a task force to study the idea.

On Monday, Roemer told about 250 teachers and education officials that teacher pay raises were at the top of his list for education reform.

He said that next items were developing a teacher evaluation program and improving the teacher-to-student ratio in the classroom.

When all that is done, said Roemer, school officials should change the subjects taught in the classroom to focus more on thinking than memorizing. He also said schools should develop ways to attract and hold students' attention.

The free tuition idea Cody spoke of Sunday came from New Orleans businessman Pat Taylor, who promised students at one school nine months ago to pay their way to college if they kept up a B averages in high school.

Cody said such a program would give free tuition, room and board to any graduate of a Louisiana high school who wants to attend a Louisiana college, provided that student meets the college's

academic requirements and his family meets certain financial requirements.

The superintendent said Gov. Buddy Roemer is giving the proposal serious consideration and may soon convene a task force to study the idea.

"It's hard to know how many students would go under this kind of program," Cody said after his speech to the convention delegates. "But, I certainly think it's a worthwhile thing to study."

One year's worth of tuition, books, room, board and spending money at a Louisiana university costs about $6,000, "which is more than many families can afford," said Cody. For a student to be eligible for the program, his family's annual income could not exceed "a ballpark figure of $30,000," he said.

The superintendent touched on a number of topics.

He blasted his own department's stringent regulations and policies that some individual school districts say are too restrictive.

The state's educational bureaucracy has grown far beyond reason, he said.

"We've got to stop telling you how to do your jobs," he told the cheering teachers.

He also discussed ways to lower the dropout rate and make more efficient use of class time.

Cody said the state should seriously consider either extending the school year of children or set up a summer school program for at-risk students. The state now mandates that school systems offer a minimum of 175 instructional days a year for all students.

"If we're talking about a zero dropout rate, 175 or 180 (days) isn't enough," he said. He noted that some European and Asian countries keep their children in school for 200 to 250 days a year.

He also said that making students repeat a grade is a waste of time. The state instead should fund summer school programs for low-achieving students, he said.

EXHIBIT H

P.O. Box 626
Alexandria, Louisiana
February 15, 199

Pat Taylor
The 2-3-4 Loyola Building
New Orleans, Louisiana

Dear Pat,

Just a note to tell you of the many nice comments I heard following your speech yesterday at the Alexandria Rotary Club. I have spoken to that group a number of times myself, and can tell you that their response is a good indicator of the business community's mindset.

Thought you might like to have a copy of the coverage in today's Town Talk. It will be helpful later on to have a record of the effort you are making to take this project all across the state.

I applaud your enthusiasm. It was nice having you in town.

See you next week in Baton Rouge.

Sincerely,

JoAnn W. Kellogg

JWK:tm

Suite 202, Dunbar Plaza
3600 Jackson Street
Alexandria, LA 71303
(318) 422-5463
1-800-737-5463

GIL CREDEUR
Investment And Financial Planner
February 15, 1989

MR. PATRICK F. TAYLOR
234 Loyola Avenue
New Orleans, LA 70112

Dear Pat,

I heard and experienced would be a more accurate description, your presentation to our Alexandria Rotary Club on Tuesday of this week.

Please accept my thanks and admiration for your clear thinking, high expectations of ourselves and our children, and your courage and dedication to making a difference in the quality of our lives.

I wonder if you were surprised, as I was, at how few of us raised our hands to answer yes to your question, "How many of you went to college on the GI Bill?"

The response to your second question would seem to indicate that only you and I (of the 200+ people in that meeting) are the first college graduates in our families. From the expression of surprise I saw from the audience, to my being the only one to answer yes to your question, it would be safe to say that "their minds would be blown" if they knew that my Father is absolutely illiterate and my Mother was in school for about three years.

Those two good people were convinced that education would be the "magic carpet" for us. They put their deeds (of sacrifice and self denial) behind their beliefs and words.

Pat, like you, I also have a strong sense of stewardship and "need to give back." It is rather obvious that we are needed! Please be in touch to let me know what I can do.

Thanks,

Gil

26C Brandon Hall Drive
Destrehan, LA 70047
February 17, 1989

Mr. Pat Taylor
Taylor Energy Company
Suite 500
234 Loyola Avenue
New Orleans, LA 70112

Dear Mr. Taylor:

Your appearance on WYES - Channel 12 last evening prompts me to write to you, Your continuing generous efforts to improve the quality of life in our area are remarkable and copious, Countless people will benefit now and in the years to come.

I am certain that much of your good work goes without proper recognition and thanks, This is a sad and embarrassing situation.

For my part, I simply wish to say "Thank you" for your foresight and selfless generosity.

Best wishes and continued success,

Paul Forbes

Exhibit J

Delgado Community College
President's Office
A Comprehensive Community College
501 City Park Avenue
New Orleans, Louisiana 70119-4399
504/483-405
James A. Caillier
President

January 19, 1989

Mr. Charles Ferguson
Editor
The Times-Picayune
3800 Howard Avenue
New Orleans, La. 70140

Dear Mr. Ferguson:

In the Dawn Ruth article of January 16, 1989, "Millionaire Tackles Education Reform", I was inappropriately quoted as opposing the "Taylor Plan". This simply is not true.

Pat Taylor's plan calls for a comprehensive, better utilized community college system and offers a very workable expansion proposal. Louisiana has eight regional vocational-technical campuses strategically located throughout the State. These eight schools could be converted to premiere vocational- technical/community college type institutions, offering retraining, remediation continuing education and one or two years of post secondary education with an associate degree transferable to a four-year university. This proposal would leave a top quality vocational-technical system of over thirty schools, and create the foundation for a first class community college system capable of handling the remediation needs of inadequately prepared high school graduates.

Louisiana is the only State that does not provide an adequate two-year community college option. It is an unnecessary burden on taxpayers to require four-year universities to do what should be done at less expensive two-years colleges. Pat Taylor's plan of removing remedial instruction from four-year universities and creating an expanded community college system is right on target.

Sincerely,

James A. Caillier

JAC:men
/004

Exhibit K

State of Louisiana
Board of Trustees for State Colleges and Universities
State Office Bldg., Third Floor
150 Riverside Mall
Baton Rouge, LA 70801

February 17, 1989

Mr. Patrick F. Taylor
Taylor Energy Company
The 2-3-4 Loyola Building
New Orleans, LA 70112

Attention: Rear Admiral Jack E. Smith

Dear Mr. Taylor:

It was indeed a privilege having you and your staff at the luncheon last Thursday at the Camelot Club here in Baton Rouge. Your very fine presentation was well received by the University presidents of our system, as well as by the board members present for that occasion.

The following day, at a full meeting of the Board of Trustees for State Colleges and Universities, a motion was made by Mr. Pat A. Strong to "adopt, in principle, the concept of the 'The Taylor Plan'; additionally, the Board will work with the other higher education boards in a joint effort to implement admission standards at four year institutions commensurate with their missions." This motion was seconded and received a unanimous vote of approval by the sixteen members present at that meeting. Only two members of the Board were not present at Friday's meeting.

As I have stated to you before, I am very excited about this marvelous concept and I look forward to assisting you, along with the Board of Trustees and the university presidents, in bringing it to fruition.

Please call upon me at any time that I can be of assistance to you.

Yours sincerely,

J. Larry Crain
System President

JLC:pcc

MINUTE ENTRY
MARCH 6, 1989
WISDOM, J.
SCHWARTZ, J.
WICKER, J.

UNITED STATES OF AMERICA — CIVIL ACTION
VS. — NO. 80-3300
STATE OF LOUISIANA, ET AL. — SECTION "A"

This matter is before the Court on motion of the Governor's Commission on the Availability of College Education for Qualified Louisiana Youth filed March 3, 1989 for leave to participate in the captioned matter as amicus curiae.

Movant is not a party to this litigation; nor has movant previously obtained leave to participate in the litigation as amicus; nor until this date has movant indicated a desire to mae any appearance herein or file any matters in the record. Prior to this date, the Court appointed a Special Master to issue findings and recommendations regarding an appropriate remedy and hearings are scheduled to commence before him on March 7, 1989. The parties have already had numerous conferences with the Panel and the Special Master and the parties have already submitted their proposed plans and amendments to those plans, lists of witnesses and statements of witnesses. Pre-trial memoranda in respect of the Special Master's hearing were due this date.

Accordingly, the Court is of the opinion that to permit the movant to appear as amicus curiae or to intervene in these proceedings at this late date would be disruptive to the proceedings before the Court. Moreover, the interests movant seeks to represent are already adequately represented by the parties to the litigation.

The motion to appear as amicus curiae is therefore DENIED and the movant will not be permitted to make an appearance herein, participate in or present evidence at the hearings or file any matters of record. However, should the movant wish to submit to the Special Master a written remedial plan for higher education, the Special Master may in his discretion review such plan and make any portion of it a matter of record.

CC: All Counsel of Record
Mr. Paul Verkuil
Mr. Max Nathan
Mr. David Boies

The Monroe News-Star
10/27/89

Ethics board to check firm's legality

By John Hill
Gannett News Service

BATON ROUGE - The state Ethics Commission Thursday decided to investigate the legality of a private law firm helping Attorney General William Guste in Louisiana's college desegregation suit.

Guste asked for a ruling after acknowledging that Louisiana oilman Pat Taylor had arranged for a New Orleans law firm to help Guste prepare arguments in the case.

Commissioners unanimously agreed to determine if the arrangement violates the State Code of Ethics' provisions that prohibit people who are public servants, or acting as public servants, from being paid by private sources. A hearing was set for Nov. 14, the commission's next meeting.

"We think the Ethics Commission should investigate this to see if the Ethics Code has been violated," said state Inspector-General Bill Lynch, who represented Gov. Buddy Roemer at the meeting.

Lynch had written the commission Wednesday to ask for an investigation.

Guste, in a letter hand-delivered to the commission Thursday, asked if it would be proper for a private citizen to donate money to the attorney general's office to pay for private attorneys.

The commission directed the staff to investigate that issue as well.

Attached to the inspector-general's letter requesting an ethics investigation was a copy of a Gannett News Service article published Saturday in the Monroe News-Star and The Times of Shreveport in which the private law firm's involvement in the case was revealed.

In that article, Dermot McGlinchey, senior partner in the New Orleans firm of McGlinchey, Stafford, Mintz, Cellini and Lang, said the lawyers had been retained by one of its clients to assist Guste.

The McGlinchey law firm, represents Taylor's independent oil firm, Taylor Energy Inc.

McGlinchey said three lawyers from his firm were acting as "borrowed servants" and were working under Guste's direction. However, he said no client had yet been billed for their services.

The three McGlinchey lawyers prepared most of a brief submitted to the Supreme Court two weeks ago asking it to hear the state's appeal of a finding by a New Orleans federal court that Louisiana operates a segregated system of higher education in violation of the 1964 Civil Rights Act.

A passage in that brief praised the so-called "Taylor Plan" - the program under which the state pays college tuition for bright, needy students who meet certain criteria. The plan was steered through the Legislature by Taylor, who was the focus of a recent segment on CBS-TV's "Sixty Minutes."

Guste confirmed Thursday that Taylor was the person who had offered to assist his office by providing him with the McGlinchey firm's lawyers.

"(Taylor) was in my office discussing higher education. I told him how it was approaching the lawsuit and that I needed help," Guste said in an interview Thursday. "He volunteered to provide legal services to us gratis. I didn't know if he was paying for it or whether it was free."

Guste said it is common practice for law firms to provide free legal advice to his office.

"Frequently, when the state has a lawsuit, people have prepared briefs for us, tell us you ought to make this kind of argument or make suggestions. That has happened often," Guste said, adding that he's never turned down assistance.

"I welcome that kind of input," the attorney general said.

Guste said Taylor only wanted to help.

"I sure hope we will avoid criticism of a man who is helping the state," the attorney general said.

"The headline on your story made it look like everyone was doing something wrong," Guste said.

At the Ethics Commission hearing Thursday night, one of the commission's attorneys said the McGlinchey law firm's name appears on a brief submitted to the Supreme Court on behalf of the state.

"I am troubled by the appearance of the McGlinchey law firm's name as special counsel on the brief," said Grey Sexton, the commission's attorney and director.

Sexton said that indicates the law firm had become a public servant, and therefore, could not be paid for by Taylor or any other private citizen.

Guste's request for an opinion from the commission asked if it would be proper for a private person, such as Taylor, to donate cash on the condition that it be used for a specific purpose, such as paying private attorneys to assist in arguing the state's case.

Asked if that had ever been done, Guste said he didn't know.

"I don't recall it, but the constitution provides for that," he said.

Guste said he would like to accept Taylor's financial help, then pay the McGlinchey firm with that money "so there is no theoretical conflict of interest."

Guste has the authority to hire private law firms to assist his office. But because of budget cuts, he does not have the money to pay the McGlinchey law firm.

Last week, Sexton said there is a whole body of Ethics Commission rulings that it is not proper for a private citizen to pay the salaries of people who are public servants or people who act as public servants.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	CIVIL ACTION
VS.	NO. 80-3300
STATE OF LOUISIANA	SECTION "A"

[July 13, 1989]
ORDER

Before CHARLES SCHWARTZ, JR., and VERONICA D. WICKER, District Judges*

SCHWARTZ, J.

This matter is before the Court on motion of the Board of Trustees for State Colleges and Universities filed July 11, 1989 to appear as amicus for the purpose of presenting evidence reflecting the passage of Senate Bill 280 on July 10, 1989. For the following reasons, the motion is hereby DENIED.

This Court referred the question of remedy to Special Master Paul Verkuil on December 2, 1988. Since that time, the Special Master held innumerable hearings on the issue of remedy. He issued a proposed plan on April 18, 1989, gave the parties an opportunity to file objections to it, and issued a final plan on May 30, 1989. The parties were ordered to file objections to the Final Plan or before June 12, 1989, and a hearing was held on June 26, 1989, at which time objections were argued before the Panel. The matter is now under submission awaiting issuance of the Panel's final order.

The record will also reflect that throughout the pendency of proceedings outlined above, the State Board of Trustees was represented herein by counsel of record other than counsel seeking to file the instant motion. Various submissions and arguments were presented on behalf of the Board of Trustees at all pertinent times. Movant has not indicated how its interests differ from those of the

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*This motion was decided by a quorum of the Panel of Judges Wisdom, Schwartz and Wicker, due to Judge Wisdom's unavailability as a result of illness. *See* 28 U.S.C. § 46(d); *FTC v. Flotill Products, Inc.*, 389 U.S. 179, 182-84, 88 S. Ct. 401, 404 (1967); *Tagatz v. Marquette University*, 861 F.2d 1040, 1042 (7th Cir. 1988) (citing cases); *Liner v. Phelps*, 731 F.2d 1201, 1202 (5th Cir. 1984).

State Board of Trustees and all parties whose interests are consistent with those of the movant have been adequately represented. The addition of new parties, new counsel and new evidence at this juncture will not in any way aid these proceedings or expedite the decision of this Court.

Thus, to the extent the instant motion may be construed as a motion to intervene, it is denied as untimely. *See United States v. State of Louisiana*, 669 F.2d 314 (5th Cir. 1982), aff'g 90 F.R.D. 358 (E.D. La. 1981) (after remand by 543 F.2d 1125 (5th Cir. 1976)). Construed as a motion to intervene, the motion also appears moot, inasmuch as the State Board of Trustees has participated fully in this case throughout.

To the extent the instant motion may be construed as motion to supplement the record for the purpose of calling to the Panel's attention a newly enacted statute, the Panel hereby takes cognizance of Senate Bill 280 as enacted July 10, 1989. However, there is no showing that leave to appear as amicus is necessary for the purpose of citation of this statute, nor is there any showing that the new statute implicates in any material respect the substance of the Final Plan proposed by the Special Master.

For all these reasons, the motion is DENIED.

New Orleans, Louisiana, July 12th, 1989.

/s/ CHARLES SCHWARTZ, JR.
CHARLES SCHWARTZ, JR.

/s/ VERONICA D. WICKER
VERONICA D. WICKER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	CIVIL ACTION
VERSUS	NO. 80-3300
STATE OF LOUISIANA, LOUISIANA STATE BOARD OF EDUCATION, ET AL	DIVISION "A"
	MAGISTRATE 3

[Filed July 11, 1989]
MOTION TO APPEAR AS AMICUS CURIAE

NOW INTO COURT, through undersigned counsel, comes the Board of Trustees for State Colleges and Universities and moves this Honorable court for leave to participate in the above-captioned matter as *amicus curiae* in order to present evidence of the "Taylor Plan" for higher education which has been enacted into law on July 10, 1989 and which mover believes will assist this Court in achieving an expeditious solution, in whole or in part, to the issue before the Court. The statute is attached hereto as Exhibit A-1. This motion is being filed at this time because the statute embodying the Taylor Plan was adopted only yesterday.

/s/ DERMOT S. McGLINCHEY
DERMOT S. McGLINCHEY (No. 317)
McGLINCHEY, STAFFORD, MINTZ, CELLINI & LANG
643 Magazine Street
New Orleans, Louisiana 70130
Telephone: (504) 586-1200
COUNSEL TO THE BOARD OF TRUSTEES FOR STATE COLLEGES AND UNIVERSITIES

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been forwarded to all counsel of record by placing same in the U.S. Mail, postage prepaid and properly addressed on this 11th day of July, 1989.

/s/ DERMOT S. McGLINCHEY
DERMOT S. McGLINCHEY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	CIVIL ACTION
VERSUS	NO. 80-3300
STATE OF LOUISIANA, LOUISIANA STATE BOARD OF EDUCATION,	DIVISION "A"
ET AL	MAGISTRATE 3

ORDER

CONSIDERING THE FOREGOING MOTION:

IT IS ORDERED, that The Board of Trustees for State Colleges and Universities be granted leave to appear in this matter in the capacity of *amicus curiae* and to present its plan on higher education to the Court.

New Orleans, Louisiana, this ___ day of July, 1989.

_____
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	CIVIL ACTION
VERSUS	NO. 80-3300
STATE OF LOUISIANA, LOUISIANA STATE BOARD OF EDUCATION,	DIVISION "A"
ET AL	MAGISTRATE 3

MEMORANDUM IN SUPPORT OF MOTION TO APPEAR AS AMICUS CURIAE

A party properly appears in the capacity of *amicus curiae* when that party is "one who 'not as parties, ... but, just as any stranger might for the assistance of the court gives information of some matter of law in regard to which the court is doubtful or mistaken.'" In *New England Patriots Football Club, Inc. v. University of Colorado*, 592 F.2d 1196, 1198 n.3 (lst Cir. 1979) (citation omitted). As aptly stated by the district court in *Leigh v. Angle*, 535 F.Supp. 418, 420 (N.D. Ill. 1982), "[h]istorically, . . . an *amicus curiae* is an impartial individual who suggests the interpretation and status of the law, gives information concerning it, and whose function is to advise in order that justice may be done, rather than to advocate a point of view so that a cause would be won by one party or another."

The Board of Trustees for State Colleges and Universities [hereinafter "the Board of Trustees"] seeks status as *amicus curiae* to assist this Court in resolving a complex matter of public interest vital to the future of the State of Louisiana. The Governor of Louisiana formed a special committee to address the problems of higher education in Louisiana which is chaired by Patrick F. Taylor, a prominent New Orleans business man and philanthropist. The Governor's commission on the Availability of College Education for Qualified Louisiana Youth's goals are to "help Louisiana's young people achieve higher levels of education [so that] . . . qualified students [are offered] . . . the opportunity to obtain a college education". *See*, January 10, 1989, Press Release from Governor Roemer attached as Exhibit A. The commission, comprised of respected individuals in

education and business throughout the state,[1] has been charged with considering the following proposal so that all Louisiana high school students who qualify academically may obtain a college education:

> It has been proposed to provide every Louisiana youth who qualifies, but does not have the means, the opportunity to obtain a college education with all the motivation and aspiration that will mean. Achievement of this goal will:
>
> - Create a truly open equal opportunity society for all our citizens by guaranteeing that full participation will in the future depend on individual effort and merit, not on social, economic or racial origins.
> - Allow all college bound students to make their college choice unhampered by feelings of academic or economic inadequacy.
> - Cause Louisiana to be the first of fifty states to extend the public education guarantee from 12 to 16 years.
> - Allow Louisiana to lead the way to a more competitive America through the full utilization of our most valuable resource, our youth.
> - Greatly reduce the high level of high school drop outs by creating a real reason for the continuance of education for all students.
> - Insure that all high school graduates are functionally literate and equipped to enter a meaningful career path whether that involves a job, vo-tech study or college.
> - Rejuvenate the state's economy through the creation of an educated work force.
> - Correct the inequities of a system of higher education — dependent on the support of all taxpayers — that in fact denies access to a majority of our citizens.
> - Enhance the public and private sector support of all phases of education.

---

[1] *See Governor's Commission on the Availability of College Education for Qualified Louisiana Youth* attached as Exhibit B.

See Commission on the Availability of College Education for Qualified Louisiana Youth, "The Proposal" at 1-2 attached as Exhibit B.

The plan under consideration by the Commission was authored by Mr. Patrick F. Taylor, the Chairman of the Commission, and is widely known as The Taylor Plan. The Taylor Plan has three element:

> (l) To raise admission standards at four-year state colleges and universities to require completion of 17.5 credits of core curricula study, a 2.5 grade point average, and a score of 18 on the American College Test.
>
> (2) As the need for remedial instruction at four-year institutions is reduced by the new standards, these institutions would be allowed to retain the funds saved to assist in the funding of part
>
> (3) To provide a full waiver of tuition and room and board at these four-year institutions to qualified Louisiana students who could not otherwise afford to attend.

The "Taylor Plan" has received statewide support from groups such as the Board of Regents and the Board of Elementary and Secondary Education;[2] the Board of Directors of the Chamber of Commerce;[3] State Superintendent of Education William Cody;[4] private citizens;[5] James A. Caillier, President of Delgado Community College[6] and Mover.[7]

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[2] *See Education Board's Endorsed College Guarantee Plan*, The Baton Rouge Morning Advocate, December 16, 1988 attached as Exhibit C and *'Taylor' is the key*, The Times-Picayune/States Item, January 22, 1989, attached as Exhibit D.

[3] *See The Chamber Journal*, February, 1989, attached as Exhibit E.

[4] *See Cody Backs Free College Proposal*, The Baton Rouge Morning Advocate, November 21, 1988, as attached as Exhibit F and *Education Chief Endorses Free College Education Idea*, Reveille Louisiana State University, November 22, 1988, attached as Exhibit G.

[5] *See* Letters from attender.cs at the Alexandria Rotary Club Meeting attached as Exhibit H and the February 17, 1989 letter from a Mr. Paul Forbes to Mr. Taylor who heard of Mr. Taylor's plan by watching television station WYES in New Orleans attached as Exhibit I.

[6] *See* January 19, 1989, letter of Mr. James A. Caillier attached as Exhibit J.

[7] *See* February 27, 1989, letter from J. Larry Crain to Patrick F. Taylor attached as Exhibit K.

THIS PLAN HAS NOW BEEN MADE THE LAW OF LOUISIANA HAVING BEEN EN ACTED INTO LAW ON JULY 10, 1989 BY THE SIGNATURE OF THE GOVERNOR AFTER THE "TAYLOR PLAN" OVERWHELMINGLY PASSED BOTH HOUSES OF THE STATE LEGISLATURE. A copy of this act which was only signed into law yesterday is attached as Exhibit "A-1".

Louisiana has now removed the financial obstacles to higher education by providing *free* higher education to *all* students of this state who meet the minimal requirements of the statute.[8] It is submitted that the availability of higher education free of charge to *all* qualified students will mean that qualified students will seek out the best state colleges and universities in Louisiana thereby eliminating the *de facto* segregation caused by economic hurdles. In the alternative, presentation of the "Taylor Plan" may provide the Court with additional evidence of probitive value to the issues under consideration.

It is respectfully submitted that Movers can advance an educational perspective which can materially contribute to the dispute before this court and that, in the interest of justice, The Board of Trustees should have an opportunity to be heard as *amicus curiae*.

Respectfully submitted,

/s/ DERMOT S. McGLINCHEY
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Telephone: (504) 586-1200
COUNSEL TO THE BOARD
OF TRUSTEES FOR STATE COLLEGES
AND UNIVERSITIES

[8] It should be noted that Louisiana is the first state in the United States to adopt such sweeping educational reform by making higher education available to all qualified students.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been forwarded to all counsel of record by placing same in the U. S. Mail, postage prepaid and properly addressed on this 11th day of July, 1989.

/s/ DERMOT S. McGLINCHEY
DERMOT S. McGLINCHEY

EXHIBIT A-1

Regular Session, 1989 ENROLLED
SENATE BILL NO. 280

BY MESSRS. Hainkel, Bares, Brinkhaus, Mcleod, Picard, Saunders, Bagert, Mcpherson And Poston And Representative Forster.

AN ACT

To enact R.S. 17:3026, relative to higher education assistance; to provide relative to the provision by the state of tuition to all needy, qualified, college-bound state residents; to provide relative to qualifications for such tuition assistance; to provide for the administration of such assistance; to provide relative to the funding for such assistance; to provide limitations; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 17:3026 is hereby enacted to read as follows:

S3026. College or university; guarantee; eligibility; administration

A.(1) The tuition at any public college or university in the state shall be paid by the state of behalf of any student who enrolls in such a school to pursue a baccalaureate degree, who applies therefor, and who meets all of the following qualifications:

(a) Has actually resided in Louisiana during the twenty-four months preceding college or university enrollment.

(b) Has a parent or guardian who is a domiciliary of Louisiana.

(c) has graduated front high school within the two years preceding the application with a minimum cumulative grade point average of 2.5 calculated on a 4.0 scale.

(d) Has successfully completed seventeen and one-half units of high school coursework (ninth grade level or higher), which constitutes a core curriculum and meets standards for admission to the desired college or university. The core curriculum shall be defined as follows:

(i) English I, II, III, and IV (four units).

(ii) Algebra I and II (two units).

(iii) Geometry, Trigonometry, Calculus, or comparable Advanced Mathematics (one unit).

(iv) Biology (one unit).

(v) Chemistry (one unit).

(vi) Earth Science, Environmental Science, or Physics (one unit).

(vii) American History (one unit).

(viii) World History, World Culture, Western Civilization, or World Geography (one unit).

(ix) Civics and/or Economics (one unit).

(x) Fine Arts Survey (one unit; or substitute two units of performance courses in music, dance, or theatre; or substitute two units of studio art course).

(xi) Foreign Language (two units in a single language).

(xii) Computer Science, Computer Literacy, or Data Processing (one-half unit).

(xiii) Electives from the above (one unit).

(e) Has a composite score on the American College Test of at least eighteen.

(f) Has no criminal record.

(g) Is found to be in financial need.

(2) In each year, a public college or university may admit students who qualify for payment of their tuition as provided in this Section provided that said students meet at least two of the requirements enumerated in Subparagraphs (c) through (e) of Paragraph (1) of this Subsection and fail to meet eligibility for the third by an amount equal to ten percent or less. The total number of such students shall not exceed ten percent of the total number of students admitted the previous year who received tuition as provided in this Section.

(3) To maintain continued state payment of tuition once enrolled in college a student shall meet all of the following:

(a) Make steady academic progress toward a degree, earning not less than the minimum number of hours of credit required for fulltime standing in each academic period requiring such enrollment.

(b) Maintain fulltime enrollment standing for not less than two semesters or three quarters in any academic year.

(c) Rank in the upper fifty percent of the total number of his classmates in the college in which he is enrolled or the division, if he is not enrolled in a college, within the institution of higher education.

(d) Have no criminal record.

B.(1) The provisions of this Section shall be administered by the Board of Regents, or its successor. The commission may provide by rule adopted as provided by the Administrative Procedure Act for all matters necessary to the implementation of this Section.

(2) By rule, the commission shall provide for:

(a) A mechanism for informing all students of the availability of the assistance provided pursuant to this Section early enough in their schooling that a salutary motivational effect is possible.

(b) Applications, forms, financial audit procedures, eligibility and other program audit procedures, and other matters related to efficient operation.

C. An applicant shall be found to be in financial need if:

(1) The family has one child under the age of twenty-one who is not emancipated and the four-year average adjusted gross income of the family is less than twenty-five thousand dollars.

(2) The family has two children under the age of twenty-one who are not emancipated and the four-year average annual adjusted gross income of the family is less than thirty thousand dollars.

(3) The family has three or more children under the age of twenty-one who are not emancipated and the four-year average annual adjusted gross income of the family is less than thirty-five thousand dollars.

The four-year annual adjusted gross income of the family shall be verified by Internal Revenue Service returns.

D. An appropriation of funds may annually be made to he commission sufficient to cover, in addition to any other available funds, the costs of tuition required to be paid, both initial and continuing, for the coming school year. All such payments shall be made directly to the institution to which such tuition is due after notice to the school that the state shall pay the tuition of a student and after notice from the school that the student has actually enrolled.

E. the commission may seek, accept, and expend finds from any source, including private business, industry, foundations, and other groups as well as any federal or other governmental funding available for this purpose.

F. No student shall receive a grant pursuant to this Section in an amount greater than the tuition charged by the school. The student must apply for a federal grant prior to receiving state funds.

G. The cost of the program provided for by R.S. 17:3026 shall not exceed one million nine thousand dollars for the 1989-1990 Fiscal Year

_____
PRESIDENT OF THE SENATE

_____
SPEAKER OF THE HOUSE OF REPRESENTATIVES

_____
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED:_____

State of Louisiana
Office of the Governor
Baton Rouge
70804-9004

Buddy Roemer
Governor

Post Office Box 94004
(504) 342-7015

January 10, 1989
FOR IMMEDIATE RELEASE
CONTACT: Karyn noles

ROEMER NAMES COMMISSION ONTHE AVAILABILITY OF COLLEGE EDUCATION FOR QUALIFIED YOUTH

Governor Buddy Roemer today announced he has appointed the Commission on the Availability of College Education for Qualified Youth in Louisiana.

This student commission will assess the feasibility of methods or programs designed to help Louisiana's young people achieve higher levels of education.

The commission will be chaired by Patrick Taylor, Chairman and CEO, of Taylor Energy Company in New Orleans.

"Public high school eduction has been provided to the youth of Louisiana since a44 and r.ow some 40,000 students graduate from Louisiana public high schools ever year. More than half of these students do not apply for or aend college due mainly to financial institutions," said Governor Roemer.

"We must begin turning this state around by building an educated workforce. This commission will look at ways to provide qualified students with the opportunity to obtain a college education. An educated workforce means more jobs."

The first meeting will be held at noon Tuesday, January 10, at the Baton Rouge Hilton. The public is invited to attend.

State of Louisiana
Office of the Governor
Baton Rouge
70804-9004

Buddy Roemer
Governor

Post Office Box 94004
(504) 342-7015

GOVERNOR'S COMMISSION ON THE AVAILABILITY OF COLLEGE EDUCATION FOR QUALIFIED LOUISIANA YOUTH

Dr. Wilmer Cody, State Superintendant of Education

Stephanie Desselle, Assistant Chief of Staff to Governor Roemer for Eduction

State Senator Allen R. Bares, Lafayette

State Representative Jimmy D. Long, Natchitoches

Dr. Joseph B. Johnson, President of Grambl ng University

Dr. Gregory M. O'Brien, Chancellor of the University of New Orleans

Jack A. Andonie, M.D., Chairman of the Board of Supervisors; Louisiana State University

Jackie Ducote, Direct or of the Education Council; Louisiana Assoc:ation of Business and Industry

Jo Ann Kellog, Former President of Louisiana School Boards Assocation

Louis Pendleton, D.D.S., Former Member of LSU Board of Supervisors

Dcnald R. Mintz, New Orleans Attorney

Roy M. LeBlanc, Member of Board of Elementary and Secondary Education for the First Congressional Distric t

Education Boards Endorse College Guarantee Plan

Capitol News Bureau

The policy-making boards for both higher education and elementary/secondary education Thursday endorsed a plan that the author says will guarantee a college education to all Louisiana citizens

At its joint meeting, the Board of Regents and the Board of Elementary/Secondary Education gave its backing to the plan being promoted by New Orleans oilman Patrick Taylor.

The plan has three basic ideas, Taylor told the boards.

First, he said, all four-year colleges must adopt minimum admission standards. Those standards should be along the lines of a 2.5 grade-point average on a high school core curriculum, Taylor said.

By forcing high school students to become better prepared for college, Taylor said universities would be able to reduce the amount of remedial education being done there. That would save about $12 million a year, he said.

Each student who qualifies through the admission standards and whose family makes less than $30,000 a year would be guaranteed a college education. Taylor said because the university tuition and fees, along with room and board, would be waived.

"The benefits of the state of Louisiana would be beyond calculation," Taylor said.

Louisiana would become the first state to extend an education guarantee beyond 12 years to 16 years and, in the process, would create a better-educated work force able to attract industry to the state, Taylor said.

He estimated about 5,000 students would take advantage of the program in its first year. At an average cost of $4,000 per student, the program would cost about $20 million, Taylor said.

"But I don't see it as cost. My estimation of cost is the cost of welfare, the cost of dropouts...the cost of incarceration. It costs four to v=five times that to keep someone in prison," Taylor said.

He said that by giving all students the opportunity to go to college, motivation of students would increase and so would the involvement of parents who would see a better life for their children.

"Attendance would be based on a person's ability to learn and not on their parent's ability to pay," Taylor said.

Taylor said he got the idea after promising a group of New Orleans students a college education if they took a core curriculum and earned a B average. The students had all failed at least once and most of them twice, Taylor said.

He said the change in their attitude has been phenomenal and the students today are eagerly]participating in their classes and have the help of both teachers and parents.

'Taylor plan' is the key

New Orleans

It is very encouraging to read front-page articles on Louisiana education reform efforts. Patrick Taylor's idea of eliminating economic barriers and basing college opportunity on academic ability is the key to unlocking the total potential of every child.

The plan will provide a level of expectation for students who are normally written off as poor achievers. It creates an incentive to excel and stimulates motivation. Suddenly secondary teachers become college prep teachers and parents begin to realize that a college education for their children is not unrealistic.

This plan is not a scholarship grant, loan or gift. It provides equal opportunity to all who qualify.

On Dec. 15, 1988, both the Board of Regents and the Board of Elementary/Secondary Education unanimously endorsed the "Taylor Plan." Many other officials have expressed highly favorable views, including five permanent university presidents or chancellors, four governors, several state representatives and senators and the Chamber (New Orleans and the River Region).

After meeting with a group of the original "Taylor's Kids," Gov. Roemer immediately decided to appoint a high-level commission to further develop and discuss implementation feasibility.

"We expect 5,000 Louisiana students to qualify the first year. The cost this first year is less than 1 percent of Louisiana education expenditures. We suggest that cost to Louisiana is not the expense of this program, but rather cost is the ever increasing expense of welfare, unemployment, prisons and crime.

Education is a foundation on which Louisiana can build a new and expanded economic base. We must give all children in Louisiana the tools necessary to explore and reach their total potential.

Removing economic barriers to higher education is the key.

Wilmer S. Cody
State Education Superintendent
Roy M. LeBlanc
Member, BESE
New Orleans
Chamber Journal

Breaking the Early Bonds - Of Failure

A recent study undertaken by the New Orleans Council for Young Children in Need concludes that early intervention is the solution to the cyclical trap of failure engendered by poverty in so many of New Orleans children. With almost half of New Orleans children born into poverty, some 45 percent of those under the age of five are "in need," not receiving proper nutrition or education.

Members of the Business Task Force of Education, Inc. participated in the study, made public several months ago. The report is only the first phase of work.

The report identifies problems endemic to poverty, leading to statistics such as a 60 percent failure rate on the California Test of Basic Skills (CTBS reading and math tests); with less than 50 percent completing public high school. Recommendations include increased sex education programs for preteens and teens; schools for pregnant teens with on-site childcare; and early intervention programs for three and four-year olds.

The report is available at no cost by contacting Sally Hays, Business Task Force director, at 527-6945.

'Thumbs Up' on Taylor's Education Plan

The Board of Directors of the Chamber unanimously endorsed the education plan offered by Patrick F. Taylor, president and chairman, Taylor Energy Company, for the reform of the state;s system of higher education. Presented at The Chamber's January Board meeting, Taylor's three point plan is as follows:

1. Raise admission standards at four-year state colleges and universities to require completion of 17.5 credits of core curricula study, a 2.5 grade point average, and a score of 18 on the American College test (ACT). These requirements are considered the minimum qualifications for students expecting to complete a four-year course of study. They should take effect in 1992, allowing high school students four years to prepare.

2. Phase out remedial education programs at these institutions and apply the funds saved to university-level instruction. Remedial instruction for students desiring to enter a four-year institution is better provided at junior and community colleges, which would continue to be open admission, free tuition schools.

3. Provide a full waiver of tuition, room and board at some or all of those four-year Institutions to qualified Louisiana students whose families earn less than $30,000 annually. The waiver should be adopted immediately to prevent any further loss of qualified students.

COMMISSION ON THE AVAILABILITY OF COLLEGE EDUCATION FOR QUALIFIED LOUISIANA YOUTH ("TAYLOR COMMISSION")

THE PROBLEM

During the early 1840's the United States concluded a war with Mexico and was facing severe Indian problems in the Western Territories. Eli Whitney's cotton gin was about to revolutionize the cotton industry and steam powered river travel was just over the horizon. The economy was beginning a transformation from agricultural to industrial and our State determined that providing a pulic high school education was a necessity and a governmental responsibility.

For more than a centuy then, American children have been assured a high school education. Louisiana took this step in 1844 and and was the first southern state to do so. However, since then scientific and technological breakthroughs and accompl ishments have made our world exceedingly more dangerous and complicated. Yet there has not been an equal increase in the amount of guaranteed education we provide all our children.

Consequently, college education is not readily available to the lare majority of our young people. In Louisiana it is estimated that out of some 40,000 public high school graduates annually as many as 5,000 have the capacity to qualiy for university admission, but are unable to attend because of a lack of funding. Society and the State suffer, as well as our young people.

THE PROPOSAL

It has been proposed to provide every Louisiana youth who qualifies, but does not have the means, the opportunity to obtain a college education with all the motivation and aspiration that that will mean. Achievement of this goal will:

- Enhance the image of this State in a quantum advancement as the first of fifty states to establish a twenty-first century education system.

- Allow Louisiana to lead the way to a more competitive America by increasing the brain-power base of our country.
- Attract new industry, investment and res idents .
- Retain Louisiana youths as an educated citizenry and work force for Louisiana.
- Enhance the public and private sector support of all phases of education.
- Correct the inequities of the present system whereby taxayers' dollars are used to provide a higher education (including remedial courses) to students whose only qualification is their parents' ability to pay a portion o the total cost of their education — tuiton, room and board.
- Greatly improve the utilization of our existing lower, middle and high school educational system by providing a valid and real reason for greater effort on the part of students, parents, teachers and administrators.
- Properly utlize four-year level institutions of higher learning.

In summary, remove the only remaining real barrer to a truly free and open equal opportunity Society.

THE CHARGE

This Commission is therefore constituted and charged with consideration of the above proposal to insure that college education be made available to all Louisiana high school graduates who qualify academically, but who do not have the financial means necessary. Your deliberations should include the basic proposal, as well as, but not limited to the following:

- The necessary steps for insuring that high school graduation and college entrance requirements are strengthened so that these accomplishments are meaningful.
- The requirements for students' eligibility in such a program as is proposed, both academically and financially.

- The projected number of students that fall in the category of meeting academic requirements and being qualified, but are unable to attend college because of lack of financial means.
- The projected cost of providing such education to these students.
- The use of current scholarship prorams as complimentary.
- The role of the State in funding such a proposal.
- Remedial education in colleges and the elimination of such education as being wasteful and duplicative.
- The utilization of current funds, now being provided for remedial education, for the implementation of the basic proposal.
- Implementation of this proposal through the public and the Legislature.
- Any additional factors that are determined to bear.

Subsequently, a report of your conclusions and appropriate recommendations should be made as early as possible.

CODY BACKS FREE COLLEGE PROPOSAL

by Mark Lambert
Advocate staff writer

[first and second paragraphs omitted in printing]

The idea came from New Orleans businessman Pat Taylor, who runs an education program in New Orleans for disadvantage students. Cody said such a program would give free tuition, room and board to any graduate of a Louisiana high school who wants to attend a Louisiana public college, provided that student meets certain financial requirements.

Cody said the program would be costly, "but what better could we spend it on?"

The Superintendent said Gov. Buddy Roemer is giving the proposal "serious consideration" and may shortly convene a task force to study the idea.

"It's hard to know how many students would go under this kind of program," Cody said after his speech in the convention delegates. "But I certainly think it's a worthwhile thing to study."

He noted that one year's worth of tuition, books, room, board and spending money at a Louisiana university costs about $6,000, "which is more than many families can afford." For a student to be eligible for the program, his family's annual income could not exceed" a ballpark figure of $30,000," Cody said.

Cody's address came on the opening day of the Louisiana Federation of Teachers annual convention. Hoemer is scheduled to address the delegates on Monday.

Cody touched on several education topics Sunday, including the need to reduce the state's 10 percent dropout rate which is the highest in the country.

"I keep thinking about . . . those first graders, who will graduate in the year 2000, and what life will be like for them," Cody said. "Just reducing the dropout rate a little bit, however important that might be, is not enough. We need -???- dropouts by 2006," the year that children born this year will be scheduled to graduate from high school.

Because society is becoming increasingly technological and jobs are requiring more education, "there will be almost no room for high school dropouts by the year 2000," Cody said. He noted that the year 2000 "used to sound so far away, but it's only 12 years away now."

Cody the state's first appointed superintendent of education, said the road to reducing the dropout rate and raising academic achievement may be easier in the next decade than it has been in the past because "the climate's changed."

He said Roemer's top priority is education, and Cody said his department is working closely with the state Board of Elementary and Secondary Education "with educational issues, not political ones."

He said Louisiana must take a more active role in helping not only students but their families, too, he said.

Cody proposed that the state begin a "combination program, eventually for all parents," that would educate parents of young children on the best way to achieve educational success for their children.

"I think we would invest the state's money very, very wisely if we had a parent education program," he said. Such a program would teach parents about child nutrition, language development and motor skills of children, Cody said, noting that a similar program is under way in Missouri.

Cody also blasted his own department's stringent regulations and policies that some individual school districts say are too restrictive.

The state's educational bureaucracy, has grown "far beyond reason," he said.

"We've got to stop telling you have to do your jobs," he told the cheering teachers.

Cody said the state should seriously consider either extending the school year for children or start funding a summer school program for -???- students. The state now mandates that school systems -???- a minimum of 175 instructional days a year for all students.

"If we're talking about a -???- dropout rate, 175 or 180 (days) isn't enough," he said. He noted that some European and Asian countries keep their children in school for 200 to 250 days a year.

And, instead of retaining students for a year, which Cody called "a waste of money," the state instead should fund summer school programs for low-achieving students, he said.

"I'd put that money into something to help kids do better," he said.

EDUCATION CHIEF ENDORSES FREE COLLEGE EDUCATION IDEA

By The Associated Press

SLIDELL(AP) - Giving college educations to students who otherwise couldn't afford them would cost the state about $20 million a year, but it would be worth it, says Education Superintendent Wilmer Cody.

"What better could we spend it on?" he asked Sunday during a speech to the Louisiana Federation of Teachers, which Gov. BUddy Roemer addressed on Monday.

"It's hard to know how many students would go under this kind of program." Cody said after his speech to the convention delegates. "but I certainly think it's a worthwhile thing to study."

The superintendent said Roemer is giving the proposal serious consideration and may soon convene a task force to study the idea.

On Monday, Roemer told about 250 teachers and education officials that teacher pay raises were at the top of his list for education reform.

He said the next items were developing a teacher evaluation program and improving the teacher-to-student ratio in the classroom.

When all that is done, said Roemer, school officials should change the subjects taught in the classroom to focus more on thinking than memorizing. He also said school should develop ways to attract and holds students' attention.

The free tuition idea Cody spoke of Sunday came from New orleans businessman Pat Taylor, who promised students at one school nine months ago to pay their way to college if they kept up B averages in high school.

Cody said such a program would give free tuition, room and board to any graduate of a Louisiana high school who wants to attend a Louisiana public college, provided that student meets the college's academic requirements and his family meets certain financial requirements.

The superintendent said Gov. Buddy Roemer is giving the proposal serious consideration and may soon convene a task force to study the idea.

"It's hard to know how many students would go under this kind of program," Cody said after his speech to the convention delegates. "But, I certainly think it's a worthwhile thing to study."

One year's worth of tuition, books, room, board and spending money at a Louisiana university costs about $6,000, "which is more than many families can afford," said Cody. For a student to be eligible for the program, his family's annual income could not exceed "a ball park figure of $30,000," Cody said.

The superintendent touched on a number of topics.

He blasted his own department's stringent regulations and policies that some individual school districts say are too restrictive.

The state's educational bureauracy has grown far beyond reason, he said.

"We've got to stop telling yo how to do your jobs," he told the cheering teachers.

he also discussed ways to lower the dropout rate and make more efficient use of class time.

Cody said the state should seriously consider either extending the school year for children or set up a summer school program for at-risk students. The state now mandates that school systems offer a minimum of 175 instructional days a year for all students.

"If we're talking about a zero dropout rate, 175 or 180 (days) isn't enough," he said. He noted that some European and Asian countries keep their children in school for 200 to 250 days a year.

he also said that making students repeat a grade is a waste of time. The state instead should fund summer school programs for low-achieving students, he said.

P. O. Box 626
Alexandria, Louisiana
February 15, 1989

Pat Taylor
The 2-3-4 Loyola Building
New Orleans, Louisiana

Dear Pat,

Just a note to tell you of the many nice comments I heard following your speech yesterday at the Alexandria Rotary Club. I have s po ken to that group a number of times myself, and can tell you that their response is a good indicator of the business community's mindset.

Thought you might like to have a copy of the coverage in today's Town Talk. It will be helpful later on to have a record of the effort you are making to take this project all across the state.

I applaud your enthusiasm. It was nice having you in town.

See you next week in Baton Rouge.

Sincerely,

Jo Ann W. Kellogg

JWK:tm

Suite 202, Dunbar Plaza
3600 Jackson Street
Alexandria, LA 71303

GIL CREDEUR
Investstment And Financial Planner

(318) 422-5463
1-800-737-5463

February 15, 1989

MR. PATRICK F. TAYLOR
234 Loyola Avenue
New Orleans, LA 70112

Dear Pat,

I heard and experienced would be a more accurate description, your presentation to our Alexandria Rotary Club on Tuesday of this week.

Please accept my thanks and admiration for your clear thinking, high expectations of ourselves and our children, and your courage and dedication to making a difference in the quality of our lives.

I wonder if you were surprised, as I was, at how few of us raised our hands to answer yes to your question, "How many of you went to college on the GI Bill?"

The response to your second question would seem to indicate that only you and I (of the 200+ people in that meeting) are the first college graduates in our families. From the expression of surprise I saw from the audience, to my being the only one to answer yes to your question, it would be safe to say that "their minds would be blown" if they knew that my Father is absolutely illiterate and my Mother was in school for about three years.

Those two good people were convinced that education would be the "magic carpet" for us. They put their deeds (of sacrifice and self denial) behind their beliefs and words.

Pat, like you, I also have a strong sense of stewardship and "need to give back." It is rather obvious that we are needed! Please be in touch to let me know what I can do.

Thanks,

Gil

26C Brandon Hall Drive
Destrehan, LA 70047

February 17, 1989

Mr. Pat Taylor
Taylor Energy Company
Suite 500
234 Loyola Avenue
New Orleans, LA 70112

Dear Mr. Taylor:

Your appearance on WYES - Channel 12 last evening prompts me to write to you, Your continuing generous efforts to improve the quality of life in our area are remarkable and copious. Countless people will benefit now and in the years to come.

I am certain that much of your good work goes without proper recognition and thanks, This is a sad and embarrassing situation.

For my part, I simply wish to say "Thank you" for your foresight and selfless generosity.

Best wishes and continued success,

Paul Forbes

Exhibit J

Delgado Community College
President's Office
A Comprehensive Community College
501 City Park Avenue
New Orleans, Louisiana 70119-4399
504/483-405
James A. Caillier
President

January 19, 1989

Mr. Charles Ferguson
Editor
The Times-Picayune
3800 Howard Avenue
New Orleans, La. 70140

Dear Mr. Ferguson:

In the Dawn Ruth article of January 16, 1989, "Millionaire Tackles Education Reform", I was inappropriately quoted as opposing the "Taylor Plan". This simply is not true.

Pat Taylor's plan calls for a comprehensive, better utilized community college system and offers a very workable expansion proposal. Louisiana has eight regional vocational-technical campuses strategically located throughout the State. These eight schools could be converted to premiere vocational- technical/community college type institutions, offering retraining, remediation continuing education and one or two years of post secondary education with an associate degree transferable to a four-year university. This proposal would leave a top quality vocational-technical system of over thirty schools, and create the foundation for a first class community college system capable of handling the remediation needs of inadequately prepared high school graduates.

Louisiana is the only State that does not provide an adequate two-year community college option. It is an unnecessary burden on taxpayers to require four-year universities to do what should be done at less expensive two-years colleges. Pat Taylor's plan of removing remedial instruction from four-year universities and creating an expanded community college system is right on target.

Sincerely,

James A. Caillier

JAC:men
/004

STATE OF LOUISIANA
BOARD OF TRUSTEE FOR STATE COLLEGES
AND UNIVERSITIES
State Office Bldg., Third Floor
150 Riverside Mall
Baton Rouge, LA 70801

February 27, 1989

Mr. Patrick F. Taylor
Taylor Energy Company
The 2-3-4 Loyola Building
New Orleans, LA 70112

Attention: Rear Admiral Jack E. Smith

Dear Mr. Taylor:

It was indeed a privilege having you and your staff at the luncheon last Thursday at the Camelot Club here in Baton Rouge. Your very fine presentation was well received by the university presidents of our system, as well as by the board members present for that occasion.

The following day, at a full meeting of the Board of Trustees for State College and Universities. a motion was made by Mr. Pat A. Strong to "adopt, in principl[illegible] concept of 'The Taylor Plan'; additionally, the Board will work with the other higher education boards in a joint effort to implement admission standards at four year institutions commensurate with their missions." This motion was seconded and received a unanimous vote of approval by the sixteen members present at that meeting. Only two members of the Board were not present at Friday's meeting.

As I have stated to you before, I am very excited about this marvelous concept and I look forward to assisting you, along with the Board of Trustees and the university presidents, in bringing it to fruition.

Please call upon me at any time that I can be of assistance to you.

Yours sincerely,

J. Larry Crain
System President

JLC:pcc

The Times
October 29, 1989
Privately funded legal help illegal

John Hill
Capitol Beat

What might be an innocent transaction in normal business affairs can be against the law when you're dealing with public business.

That's something Attorney General William Guste forgot when he allowed New Orleans oilman Pat Taylor to hire three lawyers from a New Orleans law firm to assist Guste in the higher education desegregation suit.

Taylor, a Republican who is politically active, is head of his own Taylor Energy Inc. He's a successful, independent oilman; the $20,000 to $30,000 spent on the lawyers is small change.

Dermot McGlinchey, senior partner of the firm McGlinchey, Stafford, Mintz, Cellini and Lange, is probably accustomed to clients hiring his firm to work on other persons' lawsuits.

Both Taylor and McGlinchey are private citizens, probably unfamiliar with the State Ethics Code. Those are the rules of behavior that govern operations on behalf of the public by either elected officials or government employees.

The law says that no public servant - including anyone acting as a public servant - can be paid from private sources when they are working in the public interest. Period. There is no room for argument.

McGlinchey said his three lawyers were dispatched to Guste and worked for Guste under his direction. He said the three lawyers were "borrowed" servants.

The staff of the State Ethics Commission, which is now investigating the arrangement, said the McGlinchey law firm wrote a brief submitted to the U.S. Supreme Court on behalf of the state of Louisiana in the higher education desegregation suit. The brief presents arguments as to why the Supreme Court should assume immediate jurisdiction over the 15-year-old lawsuit.

The listing of the firm's name on the brief indicates it is acting as a public servant.

Now, why is this important?

First of all, there is the law, which the state's highest law enforcement official apparently forgot when agreeing to the setup.

Furthermore, it is always dangerous for any private citizen to have influence over something being done in the public interest.

The brief written by Taylor's law firm contains a laudatory mention of the new Orleans oilman. It mentions the "Taylor Plan," by which the state agreed to pay tuition and fees for qualifying disadvantaged students.

Consider the following underlined section of the brief:"This act, (sic) removes all economic obstacles to the exercise of a truly free choice by high school students, regardless of race, in pursuit of higher education in Louisiana. The 'Taylor Plan' signifies that Louisiana has gone farther (sic) than any other state in providing equal access to public institutions of higher learning."

Then there is this footnote in the brief that defined the "Taylor Plan": "Named for Patrick Taylor, a prominent Louisiana businessman who inspired an entire high school class of black disadvantaged students to stay in school, earn 'B' averages and obtain their high school diplomas by promising to pay their college expenses... The promise of a free college education so motivated these 'Taylor kids,' as they are known, that their grades and ambitions soared. Their success prompted Patrick Taylor to propose a similar tuition and fee waiver program statewide. The Louisiana Legislature's adoption of the 'Taylor Plan' in Act 789 evinces the State's commitment to increase the educational opportunities of all its citizens, particularly the financially disadvantaged, regardless of race."

Now, all of that might be true. Taylor certainly deserves the recognition and credit for using the free college tuition plan. But in writing those words, were Taylor's lawyers thinking of his or the state's best interests?

At a press conference at week's end, Gov. Buddy Roemer, who asked for the investigation after Gannett News Service revealed the Taylor law firm's work for Guste, put it this way: "That kind of cross-fertilization ought to be watched carefully."

The Times
September 2, 1989

SU wrote Guste's motion
School's lawyer wanted to represent state in case

By John Hill
Gannett News Service

BATON ROUGE - Southern University's lawyer wrote the original motion in which Attorney General William Guste last month asked federal district court judges in New Orleans to halt implementation of their college desegregation order, Guste acknowledged Friday.

In that motion, Guste attempted to name Southern's lawyer, state Sen. William Jefferson, D-New Orleans, as the state's - as well as Southern's - attorney in the appeal.

The motion was withdrawn within hours after one of the federal judges in the case phoned Guste to inform him that Jefferson had a professional conflict in the case.

Guste said he quickly rewrote and refiled the motion, this time, designating Assistant Attorney General Winston Riddick as the state's lawyer in the case.

The conflict was that Southern had argued Louisiana operated an unconstitutional dual system of higher education, while the state's legal argument was that it did not. U.S. Judge Charles Schwartz phoned Guste to say Jefferson could not represent both sides of that issue, Guste said Friday.

Until Guste filed his motion, John Kennedy, a legal adviser to Gov. Buddy Roemer, had been the lead lawyer for the state in the complicated higher education desegregation case.

Since the Guste motion was filed Aug. 2, there has been a major argument between Guste and Roemer as to who represents the state in the case. That argument has now spilled over into the U.S. Supreme Court, where Kennedy and Guste are battling to be designated the official state attorney.

Gov. Buddy Roemer, contacted Friday, said he had long suspected Guste was acting at Jefferson's behest in the case. He said he first noticed that the same postage meter was used to mail copies of Guste's motion and documents that came from Jefferson's New Orleans law office.

Roemer said Guste has never satisfactorily explained why he was trying to take over the case after allowing Kennedy and the governor's office to represent the state for so many months.

Jefferson, a New Orleans Democrat who is a graduate of Harvard Law School, said he wrote the motion for Guste's signature and review because the motion on behalf of the state had to be filed quickly on Aug. 2.

Guste acknowledged the original motion designated Jefferson as the lawyer representing the state in the appeal. But after Judge Schwartz phoned to inform him Jefferson had a conflict, Guste retracted the motion and filed a new one designating Assistant Attorney General Winston Riddick and others as the state's attorney.

"It was a mistake, and I acknowledge that it put Jefferson in a position of conflict. I then withdrew the initial motion and rewrote it," Guste said Friday. "Jefferson did not participate in the state's brief that was later filed.."

Roemer, who has publicly and privately questioned why Guste entered the case after permitting Kennedy to be the lead lawyer for so many months, reiterated his dismay Friday when told Jefferson and Guste acknowledged their cooperation on the motion.

"I'm still not clear as to any reason why that happened," Roemer said. "It is mighty strange. I am at a loss. I have been for three weeks... This has not be good for our state, for higher education."

Until the federal judges issued their desegregation order in mid-July., Southern had sided with the U.S. Justice Department in the 15-year-old desegregation lawsuit against the state.

Southern had argued for more money to be spent at the state's historically black institutions.

But the court ignored that plea for money and instead ordered the various higher education boards - including Southern's board of

supervisors - abolished and replaced by a single governing board. The court also ordered the Southern and LSU law schools merged.

Guste said he did not act any earlier than Aug. 2 because he felt certain someone else would appeal the court order on behalf of the state.

Jefferson said on July 31, he filed Southern's request for a new trial and an appeal to alter or amend the court order. On Aug. 1, Jefferson filed a motion asking for a delay in the implementation of the court's judgement, pending a hearing on the July 31 motions.

Lawyers for Grambling State University, the state's other predominantly black institution, filed similar motions.

On Aug. 1, the federal judges filed a notice that it questioned Grambling's and Southern's legal standing to appeal the case on behalf of the state, since no one from the attorney general's office appealed.

Jefferson said when he learned of the court's action on Aug. 2, he phoned Guste to discuss the matter with him. The attorney general had until midnight to file a motion of appeal.

Guste "couldn't believe the court was questioning Southern's legal standing," Jefferson said. "He called me back and asked when the last day for him to file was. It was that day. It had to be filed by midnight. At that point, his decision was to join in the motions filed by Southern since we had our motions already filed there. That should solve the standing issue."

Jefferson said he delivered the motion to Guste's New Orleans home. Guste signed it, and Jefferson filed that night.

In the original motion, Guste designated Jefferson as the lawyer for both Southern and the state, to argue the issue of whether the court order was constitutional.

Guste said Judge Schwartz then permitted him to refile the motion - which had not yet made it into the court record. In the second draft, Guste designated Riddick as the state's attorney.

Within 15 days, Southern reversed its 15-year legal position and argued that the state was not operating a dual system of higher education.

Roemer questioned why Guste so suddenly entered the case, when he had permitted Kennedy and Roemer to direct the desegregation case for months.

"He and I had met plenty of times; he had never raised the issue," Roemer said.

Times-Picayune
September 3, 1989

Jefferson was convenient for college case, Guste says

By the Associated Press

Convenience was the only reason state Attorney General William Guste asked Southern University's attorney to write a federal court motion to halt a disputed college desegregation order, Guste said Saturday.

Guste said he filed the motion on the last day to appeal the order, and state Sen. William Jefferson's office was closer to the federal courthouse where the papers had to be filed.

"As a convenience, he typed up a motion. That's as simple as it is," Guste said.

In the motion, Guste attempted to name Southern's attorney, Jefferson, D-New Orleans, as the state's lead attorney in the appeal. The motion was withdrawn within hours after one of three federal judges handling the case told Guste it posed a conflict of interest for Jefferson.

"It was a mistake and I acknowledge that it put Jefferson in a position of conflict,"Guste said. "I then withdrew the initial motion and rewrote it. Jefferson did not participate in the state's brief that was later filed."

Until Guste filed his motion, there was no dispute that John Kennedy, a legal adviser to Gov. Roemer, was the state's lead attorney in the desegregation case.

Roemer supports the desegregation plan ordered by the federal judges.

Guste has said he opposes the plan as an infringement on the state's constitution.

Roemer and Guste each is seeking to have his attorney named the state's official attorney in the case by the U.S. Supreme Court, which will decide in October whether to hear a full appeal.

Guste said Jefferson's conflict of interest arose because Southern had once argued that Louisiana operated an unconstitutional dual

system of higher education for whites and blacks, while the state argued it did not.

Southern dropped that long-standing argument after a three-judge panel ordered that one governing board for state colleges and universities should replace the Southern Board of Supervisors and other boards governing higher education. The judges also refused to specify how much the state must spend to improve traditionally black schools.

MINUTE ENTRY
AUGUST 1, 1989
WISDOM, J.
SCHWARTZ, J.
WICKER, J.

UNITED STATES OF AMERICA	CIVIL ACTION
VERSUS	NO. 80-3300
STATE OF LOUISIANA, ET AL.	SECTION "A"

Grambling University has filed a motion to alter or amend the Court's Opinion and Order of July 19, 1989, requesting that the motion be set for hearing on an expedited basis and that the Order of July 19, 1989 be stayed pending the outcome of Grambling's motion to alter or amend. Southern University has also filed a motion for new trial and/or to alter or amend judgment.

The Panel agrees with Grambling's contention that this matter should be handled on an expedited basis. However, the Panel is of the opinion that no oral argument is necessary and the matter will be taken under submission without oral argument on Friday, August 4, 1989. Accordingly, opposition memoranda shall be filed on or before Thursday, August 3, 1989 at 5:00 p.m. Opposition memoranda shall be limited to ten pages, exclusive of legal citations and/or reference to previously filed memoranda, and shall not restate any matters previously raised.

The Panel further notes that the State Attorney General has not filed any request for rehearing on behalf of the State, nor has the Governor or any other Board. Accordingly, the Panel questions whether Grambling, as an amicus, and Southern Board of Supervisors, as a state agency, have legal rehearing or stay where the State has not done so. A related issue is who are the real parties in interest. *See, e.g., Lewis v. Midwestern State Univ.*, 837 .2d 197 (5th Cir.), *cert. denied,*109 S. Ct. 129 (1988); *United Carolina Bank v. Board of Regents,* 665 .2d 553 (5th Cir. 1982); *Minton v. St. Bernard Parish School Board,* 803 F.2d 129 (5th Cir. 1986). Memoranda addressing this issue may be filed on or before 5:00 p.m. Thursday, August 3, and shall be limited to five pages, exclusive of legal citations. However, the Court reserves the right to address the merits of movants' contentions despite the standing issue.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	CIVIL ACTION NUMBER 80-3300
VERSUS	SECTION "A"
STATE OF LOUISIANA, ET AL	RESPONSE OF LSU BOARD OF SUPERVISORS TO RULE 59 MOTIONS

[Filed August 3, 1989]

MAY IT PLEASE THE COURT:

This Memorandum is submitted on behalf of the Board of Supervisors of Louisiana State University University and Agricultural and Mechanical College in response to the Rule 59 Motions of the United States, the Southern University Board of Supervisors and the Grambling State University Alumni Association. The LSU Board of Supervisors has not filed, and is not required to file, 8 motion for post-judgment relief with this Court. It reserves, however, all rights of appeal with respect to all issues appealable herein.

STANDING

In the first Minute Entry of August 1, 1989, the Court raised the issue whether the Grambling Alumni and the Southern Board of Supervisors have legal standing and are real parties in interest. The parties were referred to the *Lewis, United Carolina Bank and Minton* cases.

Both the LSU Board of Supervisors and the Southern Board of Supervisors are bodies corporate created under Article VIII, Section 7 of the Louisiana Constitution (1974). Under the Constitution, they are given the power and responsibility to supervise and manage the institutions and programs within their respective systems. Under Sections 11 and 12, they are empowered to receive and administer appropriated funds. The general powers of the Boards are further enumerated in La. R.S. 17:3351, which includes the authority to sue

and be sued. The LSU System and the Southern System are identified in R.S. 17:3215 and 3216, respectively.

The cases cited by the Court deal with the issue of Eleventh Amendment immunity. By application of the criteria developed in the jurisprudence, *Lewis* and *United Carolina Bank* held that the public universities under scrutiny in those cases were "arms of the state,"and not political subdivisions. As "arms of the state," the universities and their managing boards were entitled to assert immunity under the Eleventh Amendment. In the *Minton* case, on the other hand, the St. Bernard Parish School Board was held to be a political subdivision and not entitled to Eleventh Amendment immunity.

The *United Carolina Bank* and *Lewis* cases did not turn on the issue of standing nor do those cases suggest that the universities named in the actions were not proper parties defendant. The issue was whether those universities were entitled to assert the immunity accorded the state under the Eleventh Amendment. Under the jurisprudential criteria for Eleventh Amendment immunity, the Court held that the relationship between the taste and the university boards was sufficiently close to permit the boArds to assert the immunity.

Recent Federal District Court decisions have found that both the Southern Board of Supervisors and the LSU Board of Supervisors are entitled to Eleventh Amendment immunity. *Mohammed v. Board of Supervisors of Southern University,* Civil action No. 87-504-A, Middle District of Louisiana; decided by Judge Parker May 17, 1989 and *Schuth v. Louisiana State University Medical Center,* Civil Action No. 87-4191-A, Eastern District of Louisiana, decided by Judge Schwartz June 15, 1989. The LSU Board of Supervisors asserts its Eleventh Amendment immunity wherever appropriate, and it is assumed that the Southern Board of Supervisors does likewise.

Standing is a different issue from the right to assert an immunity. The Southern University Board of Supervisors and the other constitutionally created higher education boards are corporate entities with the capacity to sue and be sued. The issues raised in this litigation directly involve matters within the constitutional authority and responsibility of the higher education boards to supervise and manage the institutions in their systems. The Court has ordered that the boards be disbanded. It seems axiomatic that corporate entities whose very existence has

been challenged in judicial proceedings have standing as defendants and are a real parties in interest. The higher education boards have correctly been accorded party status as defendants in this litigation since its inception.

The standing of the Southern Board of Supervisors as a proper party defendant should be distinguished from its lack of capacity to seek affirmative relief under Title VI. The Southern University Board of Supervisors is not a person under Title VI. *United States v. State of Alabama*, 791 F.2d 1450 (11th Cir. 1986):

> "Nothing in Title VI or its legislative history suggest that Congress conceived of state instrumentality AS a person' with rights under this statute. Title VI provides for a comprehensive scheme of administrative enforcement, and the Supreme Court has implicitly recognized a private right of action for individuals injured by a Title VI violation. Absent any indication of Congressional intent to grant additional rights under this statute to non private state subdivisions against the state itself, we decline to infer such a right of action by judicial fiat." Id. at 1456-57.

While nominally a defendant, the Southern University Board of Supervisors has aligned with the plaintiff on many issues and has even sought relief beyond that or different from that sought by the plaintiff. Southern University has no standing as a plaintiff, And it is not entitled to a judgment in its favor awarding monetary or other relief in its own name.

The Grambling State University Alumni Association has not been permitted to intervene in this action as a party. It accepted from the inception of its participation the status As amicus curiae. The attempts by other persons and associations to intervene as parties uniformly have been denied by this Court. As amicus, the Grambling Alumni should be afforded reasonable opportunity to make its views known to the Court. As amicus only, the Grambling Alumni should not have standing to file a Rule 59 Motion in its own right, and its Motion and Memorandum should be received only as a memorandum In support of similar relief sought by a party In the litigation.

LAW CENTER MERGER

Neither the LSU Board of Supervisors nor any other party sought the merger of the LSU and Southern Law Centers. The LSU Board of Supervisors has not taken an official position with respect to the merger required under the Court's Order entered July 19, 1989. The minute entry of August 1, 1989 requires a response from the LSU Board of Supervisors prior to its next meeting on August 10, 1989. Therefore, the LSU Board of Supervisors neither supports nor opposes the Rule 59 Motions on the issue of merger of the Law Centers, reserving all rights with respect to that issue on Appeal.

If the Order stands, the Chancellor of the Paul M. Hebert Law Center of Louisiana State University has publicly pledged that LSU will carry out its responsibility with the spirit that recognizes the obligation to be 'a unique opportunity to merge the best attributes of Southern University and LSU."

MONITORING COMMITTEE

The LSU Board of Supervisors endorses the selection of Paul W. Merrill as one of the three members of the monitoring committee. He lends expertise to the committee as one with experience in Louisiana higher eduction who has intervening service in private industry to insulate him from any direct interest. The committee is properly balanced with another member who received his baccalaureate and masters degrees from a predominately black institution. LouisianA is fortunate to have three extremely well qualified an respected educators to serve as the monitoring committee.

OTHER ISSUES

With respect to the other issues raised in the motions, the J,SU Board of Supervisors stands on its prior Memoranda.

Respectfully Submitted,

By Attorneys,

TAYLOR, PORTER, BROOKS & PHILLIPS

By /s/ W. Shelby McKenzie

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CERTIFICATE

I certify that a copy of the foregoing was this day mailed, postage prepaid, to all counsel of record.

Baton Rouge, Louisiana, this 3rd day of August, 1989.

/s/ W. Shelby McKenzie

W. Shelby McKenzie

UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	CIVIL ACTION
v.	NO. 80-3300
STATE OF LOUISIANA, ET AL.	SECTION "A"

[Filed August 3, 1989]
BOARD OF REGENTS MEMORANDUM ON STANDING

This memorandum is respectfully submitted in response to the Court's minute entry of August 1, 1989 concerning the parties' standing.

FOREWORD

The expedited schedule established by the Court for submission of briefs on the post-judgment motions of Grambling, Southern, and the United States,[1] which had not been filed at the time of the last Regents meeting and which must be answered before the next Regents meeting, has limited counsel's ability to respond to the pending motions. This memorandum addresses only the Regents' standing in this litigation.

I. Standing under United States v. State of Alabama

After a careful analysis, the Eleventh Circuit ruled in *United States v. State of Alabama*, 791 F.2d 1450 (11th Cir. 1986), *cert. denied sub nom. Board of Trustees of Alabama State University v. Alabama Board of Education*, 479 U.S. 1085, 107 S.Ct. 1287 (1987), that a state institution had no standing to assert a Fourteenth Amendment claim under Section 1983 nor to sue under Title VI of the Civil Rights Act. Integral to that holding, however, was the finding that the institution in question was opposing the position of the state and had thus exceeded its authority as a creature of the state. In this action, the

[1] At the time the Court issued its minute entry of August 1, 1989, the Justice Department had not filed any motion, nor had Southern filed its motion for a stay of the judgment. Whether the Court intends to take all motions under submission on Friday, August 4, 1989 is unclear.

Regents' fundamental support for the state's position secures its standing.

The Alabama litigation roughly paralleled the action before this Court. The United States brought suit against the State of Alabama, state education authorities, and public institutions of higher education, charging that Alabama was operating a racially dual system. The district court granted the motion of Alabama State University ("ASU"), a predominantly black institution, to realign as a plaintiff. In its status as plaintiff, ASU sought to enjoin the State Board of Education from refusing to recertify certain ASU teacher education programs. The district court granted ASU's motion for an injunction and the state appealed, contesting ASU's standing.

As noted above, the Eleventh Circuit upheld the state's position that ASU had no standing to sue under either Section 1983 or Title VI. The Court reasoned from a line of Supreme Court cases holding that creatures of the state have no standing to invoke certain constitutional provisions in opposition to the will of their creator. It also adverted to a decision of the 5th Circuit that "public entities which are political subdivisions of a state" are "creatures of the state, and possess no rights, privileges or immunities independently of those expressly conferred upon them by the state." *City of Safety Harbor v. Birchfield*, 529 F.2d 1251, 1254 (5th Cir. 1976). While this decision was not binding on the Eleventh Circuit, the Court independently concluded that with respect to Fourteenth Amendment claims, at least, state agencies could not oppose the state. With respect to claims under Title VI the Court further concluded that a state instrumentality was not a "person" within the meaning of the statute and thus had no right of action.

The decision arguably stands for the proposition that a state agency such as the Board of Regents may not oppose the state in common defense of a civil rights action. By doing so, it could be said, the Board would operate against the will of its creator and beyond its authority as a creature of the state. In defending against the present action, however, the Board of Regents has supported the state's plan and the state's position in large measure. Nothing in the Alabama decision would suggest that a state agency cannot advance its own interests and preserve its standing under those circumstances.

II. Standing Under the decisions cited in the Court's Minute Entry

In its August 1, 1989 minute entry, the Court raised the related questions of standing and the identities of the real parties in interest, citing to a number of cases decided under the Eleventh Amendment. The cited decisions addressed the question whether universities and school boards were arms of the State that would share in the state's Eleventh Amendment immunity from suit. To determine the independence *vel non* of the agency in question the cases focus on the status of the agency under state law, the degree of state control, and the possibility that a judgment against the agency would interfere with the fiscal autonomy of the state. See e.g., *United Carolina Bank v. Board of Regents*, 665 F.2d 553, 557-561 (5th Cir. 1982).

In this case, the Board of Regents' powers and responsibilities are established by the state constitution, which grants to it, as a supervisory board over the management boards, considerable autonomy in its day-to-day operations. *Louisiana Constitution of 1974,* Article VIII. While its annual budget is determined by the legislature for specific administrative and educational purposes, the equitable nature of the remedy at issue relieves the Board of any exposure to a monetary award.

Thus, the Board of Regents is properly an independent party defendant in this action.

III. The Grambling Alumni Association Lacks Legal Standing

The Grambling State University Alumni Association, as an amicus curiae, lacks legal standing to challenge the Court's opinion and Order of July 19, 1989 ("Order").

The well-settled general rule is that only a litigant who was a party of record in the district court may appeal a district court order. *Taylor v. Ouachita Parish School Board*, 648 F.2d 959, 971 (5th Cir. 1981); *Burleson v. Coastal Recreation. Inc.*, 572 F.2d 509, 511 (5th Cir. 1978); *U.S. ex rel Louisiana v. Jack*, 277 U.S. 397, 402 (1917). There is no basis for distinguishing an amicus' right to file post-trial motions.

An *amicus* is not a party to a case. *International Union v. Scofield*, 382 U.S. 205, 209 (1965). The function of an amicus is to assist a court with a case already before it. 4 Am. Jur. 2d Section 3. It has no right to institute proceedings within the case or to take exception to or appeal from the court's rulings. Id. Sections 3, 6, 197.

Moreover, even if Grambling Alumni Association were a party, it was not aggrieved by the judgment and thus fails to meet the second crucial criterion for standing to challenge it. *Deposit Guaranty National Bank v. Roper*, 445 U.S. 326, 333 (1980); *Machella v. Cardenas*, 659 F.2d 650, 652 (5th Cir. 1981); *Burleson*, 572 F.2d at 511. Not even a party has standing unless it was aggrieved by the action in question. *U.S. v. City of Miami*, 664 F.2d 435, 445 (5th Cir. 1981) (*en banc*) (plurality opinion). As further explained by one court,

> It is elementary that a litigant is not entitled to have the court decide the merits of an issue he raises unless he can show basis for arguing that the challenged action has caused him cognizable injury.

Association Against Discrimination in Employment. Inc. v. City of Bridgeport, 710 F.2d 69, 73 (2d Cir. 1983).

Grambling Alumni Association, as an *amicus*, has not been aggrieved by the Order and has suffered no cognizable injury therefrom. The issues litigated in this case have not involved the rights or liabilities of the Alumni Association. The Order was in no way directed toward it and will have no direct effect upon it. Grambling State University is represented by its management board, the Board of Trustees, and its interests are fully represented by that agency.

The Alumni Association has no standing to challenge the court's judgment.

Respectfully Submitted,

/s/ Peggy Woodward

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Attorney For Board of Regents

CERTIFICATE OF SERVICE

I hereby certify that I have on this 3rd day of August, 1989, served a copy of the foregoing pleading on the counsel for all parties to this proceeding by mailing the same by U.S. mail, properly addressed, and first class postage prepaid.

/s/ MARGARET E. WOODWARD
ATTORNEY AT LAW

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	CIVIL ACTION
VERSUS	NO. 80-330
STATE OF LOUISIANA, ET AL.	SECTION "A"

[November 22, 1988]
OPINION & ORDER

This cause was the subject of a status hearing this date which had been fixed for the purpose of determining if the parties could arrive at a consensus plan which would comply with the Court's order of August 2, 1988 and either obviate or expedite the hearing on remedy which will be tried beginning February 15, 1989.

Without, in any manner, determining the appropriate remedy, the Court makes the following observations.

1. As indicated by our order entered herein on November 18 denying the motion of the Southern Board of Supervisors for an evidentiary hearing (to determine fully whether defendants have fully implemented all provisions of the 1981 decree) Southern University's approach seems to be misguided. The Court paraphrases what was implicit in its August 2nd opinion: because of the undisputed and utter failure of the 1981 consent decree to eradicate the dual system (as is evidenced by the annual reports submitted to the Court under the decree), a plan that would essentially mimic the 1981 consent decree – that would basically require the State simply to spend extra money on the four black schools – could show little, if any, likelihood of success in eradicating the illegal, dual racial identifiability and nature of Louisiana's public universities with all deliberate speed required under Brown II.

2. The obligations of the State to continue to comply with the remedies in the consent decree has expired, and are no longer in effect. The State of Louisiana has no present obligations with respect to it. "(A)ny available remedies (under the consent decree) necessarily precluded enforcement of the specific monetary obligations under the decree since these obligations ended in 1987 under the decree." Op.

Aug. 2, 1988, p. 13. It thus seems wholly unrealistic for any party to rely upon it as a viable remedy.

3. No consensus plan has been proposed.

4. Several plans suggest or have no opposition to vesting the State's supervision over the institutions to a single board as previously suggested by the Court in its August 2, 1988 opinion, Op. p. 34. If some guidance from the Court would be helpful to the parties, we suggest that this would be a good beginning and focal point to fashion a remedy. Moreover, based on the Court's review of the record and its knowledge gained over the years of its experience with this case, it concludes that such a requirement is likely to be a part of any remedy that will be adopted or imposed.

ORDER

Since there is a lack of consensus among the parties, it is apparent that the Court will be required to proceed with its hearing on February 15, 1989 to determine what final remedial plan shall be implemented including whether any or all portions of the proposed plans should be considered. Accordingly, shortly hereafter, the Court will appoint a Special Master pursuant to Federal Rule of Civil procedure 53 for the purpose of assisting the Court in ordering a final remedial plan and Judgment. *See Gary W. v. State of Louisiana*, 601 F.2d 240 (5th Cir. 1979). His report and recommendations shall be considered during the proceedings beginning February 15, 1989 to determine what remedial plan should be ordered.

By entering this order the Court does not mean to preclude continuing settlement discussions among the parties. Thus, the parties are welcome to submit to the Court and the Special Master for their review and approval a consensus plan which the parties believe complies with the Constitution and this Court's August 2, 1988 Order. However, any such consensus plan shall be submitted on or before February 15, 1989.

New Orleans, Louisiana, this ___ day of November, 1988.

_____
JUDGE JOHN M. WISDOM

_____
JUDGE CHARLES SCHWARTZ, JR.

_____
JUDGE VERONICA D. WICKER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	CIVIL ACTION
VERSUS	NUMBER: 80-3300
STATE OF LOUISIANA, ET AL.	SECTION: A (4)

[December 22, 1989]

This is to certify that copies of the following documents mailed to Winston DeCuir, Assistant Attorney General, Department of Justice, State Capitol, 22nd Floor, Baton Rouge, La., 70804 in the ordinary course of proceedings.

Document Number 295 - Opinion and Order issued November 22, 1988.

Document Number 4312 - Recommended Remedial Plan issued April 18, 1989.

Document Number 460 - Special Haster's Final Report issued May 30, 1989.

/s/ LORETTA G. WHYTE
LORETTA G. WHYTE
CLERK OF COURT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	CIVIL ACTION
VERSUS	NO. 80-3300
LOUISIANA	SECTION "A"

VERKUIL, *Special Master.*

RECOMMENDED REMEDIAL PLAN

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I. PROCEDURAL OVERVIEW

On August 12, 1988, the United States District Court for the Eastern District of Louisiana issued an order granting the United States' motion for summary judgment against the State of Louisiana on the issue of liability for operating a dual college system based on race. *United States v. Louisiana,* 692 F. Supp. 642 (E.D. La. 1988) (three judge court). In its opinion, the Court determined that the current consent decree, under which the parties had operated from September 1981 until December 1987, had failed to

A. The Single Board

The focus of much of the evidence and testimony at the hearing before the Master, and in the Court's initial suggestions to the parties, has been the creation of a single board to operate the public system of higher education in Louisiana. The state defendants including the Governor, the LSU System, the Board of Trustees and the Board of Regents all favor this concept even though it will result in a reduction or elimination of authority currently enjoyed by some of them. The Governor's 24-member Task Force proposed a single governance system to be known as the University of Louisiana Higher Education System.

On the other side of the single board question lies one of the defendants, Southern University Board of Supervisors. Southern's position is that the single board concept bears no necessary connection to desegregation. It cites examples of states where multiple or coordinating boards have done as well (or as poorly) as single board states and it emphasizes that Louisiana's higher education governance arrangement was set in place by state constitutional enactment after this case began.

Times - Picayune
August 12, 1988

ROEMER PROPOSES SUPERBOARD AS COLLEGE SEGREGATION REMEDY

By Ed Anderson
Capital bureau 8/12/88

BATON ROUGE - A superboard to govern all of the state's colleges and universities is the keystone of Gov. Roemer's proposal to bring the schools in compliance with federal desegregation laws, the governor's lawyer said Thursday.

A federal court ruled last week that the state's racially divided higher education system violates civil rights laws. The court suggested several remedies, including a superboard to replace the present four-board system.

Roemer said other options he has advanced as remedies include:

- Establishing a system of Junior colleges.
- Setting up "magnet schools," allowing universities to specialize in certain areas and avoid overlapping programs. For example, one college might specialize in computer programs and another in education or pharmacy.
- Establishing a flagship university.

The court had suggested junior colleges and reducing four-year schools with duplicative programs.

The court ruling came in a 1974 federal lawsuit against the state, a case in which both sides entered into a consent decree in 1981 to eliminate discrimination. The state has spent $200 million under the decree to improve black schools to attract white students, but the federal court said last week it hasn't worked.

Representatives of the schools, the federal government and the state are negotiating to reach an agreement acceptable to the federal courts before the case goes to trial next month. Roemer's plan was submitted to the negotiators Thursday, Kennedy said.

Roemer pushed a superboard proposal in the Legislature this year, but it died in the Senate. The state now has one board that oversees the predominantly white Louisiana State University System, another that operates the predominantly black Southern University System, a third that operates other colleges and a fourth board that coordinates the other three.

Morning Advocate
August 20, 1988

ROEMER TO PROMOTE CONSOLIDATING BOARDS

By Carl Redman
Capitol news bureau

Gov. Buddy Roemer said Friday he will try to convince a federal court in New Orleans that the best way to desegregate higher education in Louisiana is to create a single management board and give the new board a year to overhaul the system.

The governor said it would be unwise for state leaders to attempt to restructure Louisiana higher education in the five weeks left before the scheduled start of a trial in federal court.

Roemer said he doesn't want to "shoot from the hip" with a desegregation plan.

The best approach is to consolidate the four boards currently in charge of the state's public colleges and universities and then to give the new board time to draft a new master plan for higher education, Roemer said.

Roemer said he is pleased that two boards - the Board of Trustees for State Colleges and Universities and the Board of Regents have taken positions in apparent support for his proposal to settle a longstanding desegregation case.

Roemer said his plan will be put before a three-judge court in New Orleans during a status conference next week.

Roemer and his advisers have been working in recent months with parties to a 1981 state/federal desegregation agreement in an effort to come up with a desegregation plan that is acceptable to the federal court.

The 1981 decree expired Dec. 31, 1987, and parties to the case - including higher education officials and lawyers with the U.S. Justice Department - have been trying to negotiate a settlement to avoid a Sept. 22 trial on the case.

Early this month, the court issued an order that said the state is maintaining a dual system of higher education - one system for blacks and another for whites.

In addition, the Judges said, although the state spent millions of dollars to enhance black colleges under the aegis of the 1981 decree, black schools have gotten blacker and white schools whiter in the last half-dozen years.

The judges suggested several steps that might help desegregate the higher education system, including development of a junior college system, downgrading some four-year schools and merging higher education management.

Roemer is a strong proponent of a single board to replace the policy-making Board of Regents and the managing boards, the Board of Trustees, the LSU Board of Supervisors, and the Southern University Board of Supervisors.

Roemer reiterated Friday his position that merger of the boards should be done as a precursor to any other dramatic changes in higher education.

In addition, Roemer said he will suggest to the court that once higher education management is consolidated the new board be given a year to hold hearings and decide the future of the state's colleges and universities.

Louisiana is the "Beirut of higher education" with its competing boards and schools, and it's impossible against that backdrop to make sweeping policy decisions about the future of the system in the next five weeks, Roemer said.

Roemer said there are only two alternatives to what he is proposing.

"One is to have the court do it, and I don't want to do that," Roemer said. "The other is to design a plan in the next five weeks. I don't believe any of the parties are ready to do that.

Roemer indicated his plan would bring discussion of the future of higher education from behind closed-door negotiating sessions among lawyers and allow public input.

Roemer said that, if the court approves his idea, he still plans to seek an amendment to change the state constitution and consolidate higher education boards.

Roemer said he doesn't know if the court can simply order such a change in the state constitution.

And, he said, if the electorate approves a change in the state constitution, it would obviate appeals of a court-ordered management consolidation.

Besides, Roemer said, "We want the people to speak on the issue."

The Times
August 19, 1988

EDITORIALS

CONSOLIDATE

Mergers Depend on Single Board

Southern University-Shreveport, Bossier Parish Community College and Shreveport-Rossier Vo-Tech all rolled into one? Initial reaction to a plan that would merge the three local higher education institutions was decidedly mixed, but the discussion is at least a start toward some things that must happen quickly: Formulation of a de-segregation plan that works and creation of a single higher-ed board that will make it work.

Louisiana is under a strict deadline to come up with a new plan by Nov. 22 - just two months away - or a federal court will do it for us. All this comes in the wake of a court ruling earlier this year that threw out a 1981 consent decree which, frankly, needed to be thrown out. Not only did the old decree cost the state a great deal of money, it also made very little difference in the racial composition of student bodies.

In throwing out the decree, federal judges suggested that a new plan should look at consolidation of some existing colleges and creation of a single higher education board for the state. The single-board concept has been brought up several times in the state legislature. It has yet to win approval, even though one - instead of the four which now govern state institutions - would improve educational quality.

During discussions here Friday, another good reason for consolidating the boards became apparent, SUS President Robert Smith presented his college's plan to merge SUS with Bossier Community College and Shreveport-Bossier Vo-Tech - under Southern's administration.

The problem, though, is that SUS is governed by the Southern University Board of Supervisors and The Board of Regents; Bossier Parish Community College is run by the Bossier Parish School Board,

which answers to the state Board of Elementary and Secondary Education; Vo-Tech comes directly under BESE. Which, in all those governing structures, is going to give up jurisdiction over one if its institutions?

Technically, those under the BESE umbrella aren't really considered in the same category as the colleges supervised by a university board system. Because they are higher education in the sense of offering post-high school studies, though, they have figured into desegregation plans - particularly when paired with a two-year school such as SUS.

They all might come together under some sort of state-wide plan for two-year community colleges. Gov. Buddy Roemer has already mentioned the possibility of creating a junior college system. Along with that, all the schools could be shifted to the general supervision of the single higher ed board. Without one governing them all, though, devising a desegregation plan is going to fall inevitably into turf battles.

The discussion held here Friday among representatives from area colleges was part of a review process. A Northwest Louisiana subcommittee headed by Centenary's Dr. Donald Webb will report its findings to the Governor's Commission on Higher Education, with everyone racing the clock to meet the Nov. 22 deadline.

Whatever the panel's actual recommendations may eventually be, the general concepts presented here are pointing the right direction - toward mergers, and especially toward the state's higher ed boards.

Morning Advocate
August 25, 1988

STATE GIVEN 3 MORE MONTHS TO WORK OUT DESEG PLAN

By Karen Didier
Capitol news bureau

NEW ORLEANS - A federal court here on Wednesday gave state and U.S. Justice Department officials three more months to work out a plan for desegregating Louisiana's universities.

If an acceptable plan cannot be hammered out by late November, the court will appoint a specialist to come up with a means of integrating state colleges, with a trial set for Feb. 22, attorneys said.

A trial had been scheduled for Sept. 22 if the parties could not come up with an integration plan acceptable to the three-judge court before then.

"By the time of the (November) status conference we are supposed to have a plan for submission to the court," said Peggy Woodward, attorney for the state Board of Regents. "If we do not have a plan for submission to the court, the court will at that time appoint a special master whose job it will be to confect a plan."

Attorneys will be meeting every other week during the next three months to work on the plan. But, for the first time, university administrators also will be getting together on a regular basis to talk about desegregation, said state Commissioner of Higher Education Sally Clausen.

"We have our first meeting with just educators next Monday," Clausen said. "They (university administrators) will be hearing what kind of plans we'll have to put on the table. We're going to be meeting by ourselves and then we're going to be informing the attorneys as to what we think should take place."

Attorneys for Gov. Buddy Roemer and Southern University are optimistic that a desegregation plan can be worked out by the November deadline.

"I think the judges were pleased that we had met and worked as hard as we had and that we had made some conceptual progress. And I think that the court believes we can make further progress and that's why we have additional time to get it worked out," said state Sen. William Jefferson, who represents Southern in the litigation.

Jefferson, D-New Orleans, said the court "provided some guidance as to what the agreement should involve." But, Jefferson said that, at the court's direction, he could not elaborate on what those instructions are.

John Kennedy, attorney for Roemer, said some progress has been made during the last few months of negotiations toward coming up with an acceptable plan.

"I don't want to mislead you," Kennedy said. "We haven't agreed on any settlement proposal to put before the court. We made some progress and I think with a little additional time the parties can come together."

Kennedy said Roemer joined the attorneys and the judges for about 45 minutes of the two-hour meeting. Roemer entered and left the federal courthouse through a backdoor to the offices of U.S. District Judge Charles Schwartz Jr., where the meeting was held.

"Frankly, the governor didn't think it would be appropriate for us to have a hearing before the court," Kennedy said. "The court suggested once again that we not talk about specifics of the case and the governor wanted to respect the court's wishes in that regard.

Kennedy said Roemer is sticking by his idea of merging into one board the four boards that currently govern higher education - the Board of Regents, the Southern University Board of Supervisors, the LSU Board of Supervisors and the Board of Trustees for State Colleges and Universities.

"The governor happens to believe, and I think he's right, that the way you start restructuring is restructuring from the top through the mechanics of a single board for higher education," Kennedy said.

However, Jefferson said the Southern board continues to oppose that proposal. Jefferson said he does not see how putting one board in charge of all of higher education will result in desegregation.

"One board as a single matter can never be the answer," Jefferson said. "There's no rational basis for that. There's some, who believe that intertwined with other issues it might be an answer and that's something I guess everyone is going to explore.

"But everyone knows that if we adopted one board that schools that are segregated now will not be desegregated tomorrow. So that is not an answer in and of itself."

Roemer has said that he would like to put one board in charge and give that board a year to draft a master plan for higher education that would provide the means for desegregating state colleges.

Jefferson said money continues to be one of the sticking points in the negotiations.

"I wouldn't say it is the major problem at this point, but it certainly is one of the issues," Jefferson said.

In a decision issued earlier this month, the U.S. District Court in New Orleans ruled that the state has a segregated college system and that a consent decree aimed at achieving desegregation has not worked.

The 1981 consent decree was agreed to by the state to avoid a trial on whether the state was operating a dual system of higher education - one for blacks and one for whites - as charged by the U.S. Justice Department.

Under the decree, millions of dollars have been provided to Southern's three campuses and Grambling State University for upgrading programs, faculty and facilities.

In its ruling, the court suggested that desegregation may be achieved by putting one board over higher education, closing some four-year institutions, creating a junior college system and putting strict admission standards on the remaining senior campuses.

Thomas Todd, a Chicago attorney representing the Grambling Alumni Association in the proceedings, said that any plan arrived at must "protect" the north Louisiana campus.

"We're not going to accept any proposal from anybody that relegates Grambling and Southern to any inferior status," Todd said.

"We just made it very clear that there's no need to propose that because we're not going to accept it.

Todd said he hopes the state will make a good-faith effort in devising the desegregation plan.

"After all," Todd said, "if the state had done what it was supposed to have done in the beginning, we wouldn't be here now."

Times - Picayune
August 24, 1988

The Little Man

HIGHER EDUCATION CHANGES COMING

By Jack Wardlaw

State officials have been scurrying to come up with a new proposal that will satisfy the court and head off a complete takeover of the system by the federal judiciary.

You can call them Tigers, or you can call them Jaguars, but woe be it to the football schedule if the federal courts force a merger of LSU and Southern University.

No one really expects things to come to that pass, something almost unthinkable to most LSU and Southern students and alumni alike. But when you're dealing with a federal court, you never know.

Actually, the fate of the football teams is about the least important ramification of the revolution that appears to be upcoming in Louisiana's higher education system. And that old revolutionary, Buddy Roemer, is waiting to find out whether he'll be allowed to lead this one or be forced to watch from the sidelines while the federal courts make the decisions.

Roemer said Tuesday that he hopes to learn at a status conference in New Orleans on Wednesday just how much leeway the state is going to have in meeting a recent court decision that radically reshuffles the deck in the long-running controversy over desegregation of Louisiana's colleges and universities.

A federal panel in New Orleans ruled Aug. 2 that the state's seven-year-old desegregation plan has failed to erase the vestiges of a racially segregated system. Since then, state officials have been scurrying to come up with a new proposal that will satisfy the court and head off a complete takeover of the system by the federal judiciary.

The story, of course, goes back much further than that. From the Reconstruction era until the mid-20th century, Louisiana operated a rigidly segregated system. In the 1950s, blacks began winning admittance to law and graduate schools and in the 1960s, the system was desegregated to the extent that blacks could attend formerly all-white schools such as LSU and whites could be admitted to Southern and Grambling.

But statistically, the impact was slight, and the U.S. Justice Department took the view that for practical purposes, the system remained segregated into the 1970s. A court battle dragged on for years until, under the administration of Gov. David C. Treen in 1981, the state entered into a consent decree that involved spending more than $200 million to upgrade the predominantly black schools to make them more attractive to white students.

But on Aug. 2 a three-judge panel ruled that the plan has essentially failed. In effect, the court told state officials to come up with a workable plan or face an adverse decision when the case comes up again Sept. 22.

Meanwhile, Roemer, who took office March 14, has been a strong advocate of a plan for unifying all of higher education under a single board, instead of the present four-board system, which includes a separate board for the Southern system and includes Grambling under a board that administers colleges and universities outside the LSU and Southern systems. Roemer's plan failed by two votes in the Senate, and the matter was considered stalled at least until the 1989 legislative session.

Then along came the Aug. 2 court decision, in which U.S. District Judge Charles Schwartz, Jr. suggested some remedies that coincide with much of what Roemer has recommended.

Soon after that, some of the opposition that helped stall Roemer's plan in the Legislature they see a continuing need for a system that gives special attention to the needs of black students, many of whom are academically disadvantaged.

Roemer has made clear that while he is sensitive to the special needs of black students, he does not agree that requires a separate board to govern the Southern system. But black leaders remain

concerned that Southern would not get adequate attention under a unified system.

Retaining the present system, however, may no longer be an option. Roemer said Tuesday that the choices boil down to unifying the system or turning its operation over to the courts—which could mean the outright merger of schools, instead of just merging boards.

The question is whether the state can confect a plan that will be satisfactory to the judges, and get it implemented in a special session Roemer says he will call in the coming months.

The status conference, Roemer said, may give him some clues on just what the court will and won't allow. He hopes to get a green light to forge ahead.

"It would be a lot better if they let us do it on our own," Roemer said.

Jack Wardlaw is Capital bureau chief.

Times - Picayune
February 25, 1989

STATE PLAN FOR COLLEGES GETS REPRIEVE

By Dawn Ruth
Staff writer

"The Justice Department's plan is really a school destruction plan."
John Kennedy,
special counsel to governor

A federal court has rejected an attempt by the U.S. Justice Department to throw out the state's plan for desegregating public colleges in Louisiana.

The court ruled this week that the Justice Department's request to dismiss the state plan inappropriately interferes with the work of the court's specially appointed education expert, who is seeking to negotiate a desegregation agreement among the department, state officials, and school representatives.

The court ruled in August that the state's racially divided system of public higher education violates civil rights laws, and it asked for proposals to integrate the schools. But plans submitted by Gov. Roemer's administration, the Justice Department, the state's predominantly black schools and others were found wanting by the court, which named the expert, or special master, to oversee a solution.

Special Master Paul R. Verkuil, a former Tulane University Law School dean who now is president of the College of William and Mary in Virginia, will begin hearings March 7 and recommend a desegregation plan by the end of that month.

The Justice Department asked the court last week to disregard the state's college desegregation plan, calling it "a plea to maintain the status quo."

Roemer's plan would replace the four-board system of state college management with a single superboard, and leave most

desegregation decisions up to that board. The state plan also would establish a system of two-year colleges, and require tougher admissions requirements at some universities.

John Kennedy, special counsel to the governor, said he is pleased with the court's decision.

"The state, believes its plan will desegregate higher education in an educationally sound way," Kennedy said. "We also believe that the Justice Department's plan will not.

"The Justice Department's plan is really a school destruction plan," he said. "It will lower the quality of education for all of our schools and it will stand Louisiana's system of public higher education on its head."

The Justice Department's plan focuses on establishing two new campuses and transferring programs from predominantly white schools to predominantly black schools.

Times - Picayune
March 2, 1989

COURT: COLLEGE DESEGREGATION DEPOSITIONS SHOULD BE PUBLIC

By Steve Cannizaro
Staff writer

Pre-trial depositions in Louisiana's college desegregation case should be open to the public and not sealed, a federal special master ruled Wednesday.

Both the Justice Department and the Southern University System asked that pretrial statements not be made public for fear they could be misinterpreted or embarrassing.

But Paul Verkuil, a former dean of the Tulane University School and now president of the College of William and Mary in Virginia, rejected their requests.

Verkuil met with attorneys for the state, federal government and the public universities to work out details for hearings, which start March 7.

Verkuil has said he will recommend a desegregation plan by the end of the month.

John Kennedy, attorney for Gov. Roemer, said he was pleased that Verkuil won't prevent depositions from being seen by the media and public.

"The students, parents and faculty of the schools and the state's taxpayers have a right to know every basis of a decision in the case, Kennedy said of pre-trial testimony.

The Times-Picayune and Capital City Press in Baton Rouge jointly filed motions opposing sealing the transcripts.

Kennedy said the state will release the transcripts if no appeals are filed. None was filed Wednesday.

The court ruled in August that the state's racially divided system of public higher education violates civil rights laws. It asked for proposals from all sides to integrate the schools.

Plans submitted by Gov. Roemer's administration, the Justice Department, the state's predominantly black schools and others were found wanting by the court, which named Verkuil special master to oversee a solution.

Roemer's plan would replace the four-board system of state college management with a single superboard and leave most desegregation decisions up to that board.

It would also establish a system of two-year colleges and require tougher admission requirements at some universities.

The Justice Department plan focuses on establishing two new campuses and transfers some programs from predominantly white schools to predominantly black schools.

The battle is over a seven-year-old court agreement, or consent decree, between the state and federal government. In the consent decree, the state promised to erase the vestiges of segregation in its public college system and has spent $200 million to improve black schools to attract white students. But the federal court said it hasn't worked.

The federal judges on the panel, District Judges Charles Schwartz and Veronica Wicker and Appeals Court Judge John Minor Wisdom, have said a drastic change may be required.

It may require, they have said, reducing the number of four-year colleges with duplicate programs, setting up a system of junior colleges and giving a single board authority to run the state's colleges and universities.

The state now has one board that oversees the predominantly white Louisiana State University System, another that operates the predominantly black Southern University System, a third that operates other colleges and a fourth board coordinating the former boards.

Morning Advocate
March 5, 1989

HEARINGS TO BEGIN IN EDUCATION DISPUTE

By Carl Redman
Capitol news bureau

Attorneys representing various sides in Louisiana's ongoing higher education segregation case will square off this week before an out-of-state expert who is helping a three-judge federal court draft a plan for mixing races in Louisiana college campuses.

The structure of Louisiana's system of colleges and universities is expected to be a central theme of the hearings.

Special master Paul Verkuil is expected to begin more than a week of testimony at 8 a.m. Tuesday with opening arguments from attorneys representing the governor.

After making their opening arguments, attorneys representing Gov. Buddy Roemer, various college boards and the U.S. Justice Department will put a parade of witnesses on the stand to bolster their cases and weaken the arguments of their opponents.

Roemer's special counsel John Kennedy said the state's opening statement will outline Roemer's plans for desegregating Louisiana colleges and try to show that desegregation plans submitted by the Justice Department and Southern University will not work.

The desegregation cases dates back to the mid-1970s, when the Justice Department filed suit against the state contending Louisiana was maintaining a dual system of higher education.

In 1981, state and federal authorities signed a consent decree which Louisiana promised to spend many millions of dollars to upgrade predominantly black schools.

When the decree expired at the end of 1987, Louisiana had spent more than $169 million to improve the black schools' faculties, facilities and academic programs. Yet, little progress had been made at desegregating the schools, and the three-judge court ruled last August the state was in violation of federal law.

Verkuil, a former Tulane University law professor and now president of the College of William and Mary in Virginia, was appointed special master late last year to help the court devise a desegregation plan.

The heart of the Roemer desegregation plans is to put a single management board in place of the current four-board structure. Louisiana now has three groups of colleges - one group each under the Board of Trustees for Colleges and Universities, LSU Board of Supervisors and the Southern University Board of Supervisors And the policy-making Board of Regents is over all of them.

In addition to a single board, Roemer wants to expand community colleges in the state, mandate selective admission at most four-year schools and define more clearly the different missions of the schools.

Officials with Southern University are adamantly opposed to a single board, fearing Southern will lose its identity if submerged in a white-dominated board.

Kennedy said the desegregation plans from the Justice Department and Southern depend on moving popular academic programs from predominantly white schools to black campuses as a desegregation tool.

"We will show that approach failed - and failed miserably - in every state that has tried it," Kennedy said. "Students don't pick a course of study and then pick a university. Students pick a university and then decide what to study. Students won't follow a program that is transferred."

Kennedy said faculty members would not follow the transferred programs either.

Attorneys in the case have taken pretrial testimony from people likely to be called as witnesses in the case, and depositions by Roemer and Southern board chairman Joe Terrell illustrate how far apart the parties are on the one board issue.

Roemer, whose deposition was taken Feb. 23, said Louisiana must abandon the old way of doing things. He added that structure can help the state make wiser use of its resources.

Times - Picayune
March 7, 1989

COLLEGE HEARINGS TO BEGIN

By Dawn Ruth
Capital bureau

Negotiations between the state and Southern University have failed to settle a legal fight over desegregation of public higher education in Louisiana, Gov. Roemer said Monday, and the dispute will shift to a federal courtroom today.

At stake in the hearings starting today is the future of the state's 17 colleges and universities and their $500 million budget. The U.S. Justice Department also is involved in the case, which goes back to 1974 and in 1981 produced a costly out-of-court agreement, or consent decree, branded a failure by a federal court in August.

That court ruled that Louisiana's racially divided higher educational system violates federal civil rights laws. The court rejected solutions proposed by the state, the Justice Department, Southern University, and alumni from Grambling State University. Those are the two predominantly black public universities in Louisiana.

The court appointed an outside expert to oversee a solution. Paul Verkuil, president of the College of William and Mary in Virginia and former dean of Tulane Law School, has received depositions from the parties involved during the past five months. He is expected to give his recommendation to the court's three-judge panel by the end of the month, he said.

Roemer said Monday that John Kennedy, the governor's special counsel, and state Sen. William Jefferson, D-New Orleans, attorney for Southern University, have met several times to discuss a possible settlement, including Monday. Roemer said some progress was made, but a settlement was not yet in reach.

Roemer indicated that Southern wants him to abandon his plan to eliminate the state's four boards of higher education - including the Southern University Board of Supervisors. Roemer wants a single statewide governing board.

"I think all the parties would like to see it settled," Roemer said. "But there are certain principles involved that can't be compromised.

"Our current board structure is not helping Southern," he said. "It's not helping higher education and I won't make some political compromise to settle that."

The state and the Justice Department reached the out-of-court consent-decree agreement in 1981 on the day that court bearings were to start. The state promised to foster desegregation by spending millions to upgrade the state's four predominantly black college campuses to attract more whites. When the consent decree expired at the end of 1987, the Justice Department asked a three-judge panel to extend it because the state hadn't lived up to its promises, but the judges instead declared the decree a failure. The court suggested several remedies, including a single "superboard."

The Justice Department and Southern have presented plans to transfer academic programs from predominantly white universities to the black universities. The state says program transfers would damage the white schools and wouldn't bring greater integration because students don't follow programs.

In the state's view, the way to ensure desegregation is to merge the state's three higher education systems – Louisiana State University, Southern and a network of nine regional colleges, including Grambling – into one system governed by one board that could dictate statewide policy. Each system now has its own board, with a fourth overseeing those three.

The statements filed with Verkuil indicate that much of the questioning in the hearings will center on the superboard. Also on trial, though subtly, may be the quality of the black universities and their effectiveness in educating disadvantaged blacks. That issue has been a strong undercurrent in the case, though rarely publicly debated because of its sensitive nature.

The black schools argue that they shouldn't be closed or merged with white schools, which would be the most immediate means of integration, because they provide the kind of nurturing atmosphere and black role models that disadvantaged black students need. Joe

"Our history over the last 15 years has not been one of marching in concert in any direction," Roemer said. "We march a little bit this way, a little bit that way. Often, we march in three or four directions simultaneously."

"... I don't care how many quality people I put on the LSU board or the Southern board - do you know what their responsibility is? To protect and promote LSU on the one hand and protect and promote Southern on the other. Not to improve quality education. Not to achieve desegregation. Not to increase the focus on the public's attention on public education."

Roemer said Louisiana must spend more money on its colleges, but taxpayers are reluctant about "sending money to the old schools." People need to perceive a commitment to quality, he said.

If black universities are true to their tradition of taking students most in need of education, they have the most to gain, Roemer said.

"My goal is to take a part of our society that can gain the most from an ounce of education and deliver a pound," Roemer said. If that value is still available at those university campuses, then their commitment in the 21st century ought to be to take as much funds and as much power and deliver it to many people who are at least among us.

"... The alternative, it seems to me, is to nickel and dime them into the next century. They will not survive. Without this change, our colleges and universities will not survive."

Terrell, on the other hand, said blacks see the push for a single board and a single system as evidence of a deterioration of the state's commitment to black schools.

The minority population in the state sees it "as a purely racial issue" that will not resolve the desegregation problem, Terrell said in deposition testimony taken two days before Roemer's.

Terrell said Roemer's drive for a single board shows "a lack of moral commitment to the improvement of racial relations and ultimately desegregation of higher education."

Terrell said Southern and Grambling State University are needed because people at a predominantly white institution do not understand black culture and cannot be sensitive to the needs of young blacks.

Black colleges were created a century ago by whites who didn't want racial mixing, and in their 100 or so years of existence the black schools have carved out a special place for themselves.

"This is a very divisive issue," Terrell said. "... If you get the single board, you haven't done a damned thing for desegregation in this state. What you have actually done is to make a group of folks who have good reason not to trust white folks in the first place to trust them less.

"... Historically, white people have demonstrated why they shouldn't be trusted insofar as black people are concerned, and we see this as being threatening to something that we care about and that we think ought to be preserved."

If Southern loses its board of supervisors, Terrell said, it loses an agency that advocates the black point of view in higher education.

"(Former Ku Klux Klansman) David Duke just got elected (to the Legislature), for Christ's sake, in this state," Terrell said. "And, I saw them holding up signs saying, 'Duke for Governor. I think we need all the advocacy we can get for fear that a David Duke might find himself sitting over in the (governor's) mansion one day, and we need somebody that can speak up for these universities when they need to be spoken up for."

Terrell, chairman of the Southern board, said in his disposition that white colleges are incapable of providing that kind of atmosphere.

But Kennedy pointed out to Terrell that a study of graduation rates showed that only 8.5 percent of freshmen enrolled at Southern University at New Orleans in the fall of 1982 had graduated by the spring of 1988.

Morning Advocate
April 2, 1989

DESEG PLAN'S FINAL BRIEFS SUBMITTED

By Karen Didier
Capitol news bureau

"Attorneys have submitted their final arguments on how to desegregate the state's colleges, with representatives of Southern University asking for $200 million to upgrade programs and facilities at its three campuses and lawyers for the state reiterating the governor's call for a single university governing board.

Briefs submitted by the Board of Regents and the LSU Board of Supervisors in the state's college desegregation lawsuit track that of arguments made by attorneys for the state.

The 15-year-old lawsuit is now in the hands of special master Paul Verkuil, who was appointed last December by a three-judge federal court to draft a desegregation plan for state colleges after attorneys in the case failed to reach agreement on a proposal.

In addition to a single governing board, which would replace the four boards currently in place, the state plans calls for:

- The assignment of a unique role, scope and mission by the single board to each institution.
- The establishment of entrance requirements at some institutions.
- The creation of a comprehensive community college system with a new community college in Baton Rouge.
- The elimination of unnecessary program duplication among institutions.
- The establishment of scholarships to attract black students to predominantly white schools and vice versa.

The cornerstone of the state's plan is the creation of the single governing board to take the place of the Southern University Board of Supervisors, the LSU Board of Supervisors, the Board of Regents, and the Board of Trustees for State Colleges and Universities.

"The current multi-board and multi-system governance structure for higher education in Louisiana promotes, by its very existence, competitiveness and discord which has interfered in its effectiveness and has become destructive to higher education in Louisiana," state attorneys John Kennedy and Joseph Levin, Jr. say in their argument to Verkuil.

The shortage of state funds for colleges, which has occurred as the result of a drop in oil prices, has turned institutions and boards against one another, the state argued.

The Southern University Board of Supervisors has adamantly opposed the on-board plan and continued to do so in its final argument to Verkuil.

"Higher education governance structure and higher education desegregation are separate issues. Successful plan of higher education desegregation does not depend upon a particular form of higher education governance, said Southern's attorney, state Sen. William Jefferson, D-New Orleans.

"A successful plan of higher education desegregation depends on commitment of resources and motivation to get the job done Jefferson said.

He argued that the state Board of Regents now has the authority to provide the oversight and management the state wants vested in the new single board.

However, in its brief to the court, Board of Regents attorney Peggy Woodward noted that the resistance to change exhibited by every college in the state can only be overcome by the creation of a single governing board.

"The present management beards are too wedded to their advocacy functions to subordinate institutional concerns to a statewide plan; and the Board of Regents is too weak to rein them in. A statewide plan, enforced by a single governing board, is Louisiana's only hope for pursuing desegregation without sacrificing quality," Woodward wrote.

Southern's desegregation plan focuses on the continued "enhancement" of its academic programs and facilities, and the transfer of high demand programs from white schools to black institutions.

The state, regents and LSU argue against such directives.

Jefferson said that Southern's physical facilities and academic programs have not been as well-financed by the stated as have those at white institutions.

Programs stated under a 1981 state/federal desegregation agreement, known as the consent decree, were not given the support they needed, Jefferson said, leading to their failure to produce the desired result of attracting white students to the black campuses.

"The required enhancement of the physical facilities at the institutions of Southern University to reach the goal of comparability (with white schools) should be determined by following a comprehensive study, but should he no less the million, "Jefferson wrote.

He said Southern needs $125 million to permit its programs to receive the appropriate accreditation and "make the university more competitive for other-race students."

But Woodward argued for the Board of Regents that the consent decree programs and construction efforts at the predominantly black schools were more than adequately funded by the state during the six-year life of the decree.

As an example, Woodward pointed to Southern's nursing school, which was established under the consent decree.

In 1986-87, Southeastern Louisiana University in Hammond spent $903,751 on its nursing program, which enrolled 677 students. In the same year, Southern, which had one-tenth the students enrolled in its nursing program, requested $909,723 for the program but received only $464,795.

Woodward said the expenditures figure out to $7,377 per nursing student at Southern compared to $1,335 per nursing student at Southern.

"Perhaps the most telling argument against the claim that the predominantly black institutions were underfunded is the fact that they did not expend all the moneys appropriated to them," Woodward wrote. "For instance, from 1982-83 through 1987-88, Southern requested $68,767,709 in supplemental funding for consent decree programs. It is now complaining that it was appropriated only

$50,418,193. Yet, during that same period, Southern expended only $44,247,648, returning the unspent balance of more than $6 million.

"It is difficult to understand how the system could have needed more when it was unable to spend all it had," Woodward argued.

Also, Woodward said the consent decree programs attracted very few white students to the predominantly black campuses and, in fact, made the black campuses more attractive to black students.

Over a seven-year period, Woodward said the white enrollment at predominantly black schools "increased from a negligible .3 percent to a negligible 1.2 percent."

However, during the same time period, black enrollments at predominantly white universities sharply declined from 57 percent in 1981 to 47 percent in 1988, Woodward wrote.

"Because this was a period of relatively stable black enrollments, it is apparent that the gains made at the predominantly black institutions were realized at the expense of predominantly white institutions. Thus, the enhancements of the predominantly black institutions made them more attractive to blacks, not whites," Woodward wrote, adding that such results should "counsel against making the same mistake."

Times - Picayune
April 19, 1989

MASTER PLAN FOR COLLEGES COMPLETED

By Dawn Ruth
Staff writer 4/19/89

The state should set up a single board to govern public colleges and universities and create an open-enrollment junior college system as key steps to desegregating Louisiana higher education system, a court-appointed expert recommended Tuesday.

The recommendation by special master Paul Verkuil embraces much of the plan filed by the Roemer administration in response to an August federal court ruling that the state's racially divided public college system violates civil rights laws. But the three-judge panel in the case last year rejected the specific plans submitted by Roemer, the Southern University system, the U.S. Justice Department and others, and the judges appointed Verkuil to oversee a solution.

All parties in the litigation will meet with Verkuil May 9 to suggest changes, said John Kennedy, Gov. Roemer's attorney in the case. After that, Kennedy said, Verkuil's final report will be submitted to the judges, who are under no obligation to accept its recommendations.

The single superboard would give a mandate to desegregate colleges within five years, according to the recommendation by Verkuil, a former Tulane University Law School dean who is president of the College of William and Mary in Virginia. The superboard would take the place of the four boards now governing public colleges.

Roemer tried to get a superboard constitutional amendment through the Legislature last year, but he failed in part because of opposition from black lawmakers who feared that eliminating the separate Southern University Board of Supervisors would destroy the university's identity. Southern, the largest predominantly black university system in the country, operates campuses in Baton Rouge, New Orleans and Shreveport.

Verkuil also called for a statewide system of open-enrollment two-year community colleges. And he said the state should tighten admissions standards for most four-year schools and establish Louisiana State University in Baton Rouge as the flagship institution with the highest standards.

Southern University in Baton Rouge, the University of New Orleans, which is part of the LSU system, the University of Southwestern Louisiana in Lafayette and Louisiana Tech in Ruston would be the next most selective universities.

Southern University has opposed admission standards for its Baton Rouge campus, and Verkuil suggested giving the school five years to impose the higher standards.

The remaining four-year public colleges should be less selective or open admission, Verkuil said.

Proposals for an open-enrollment community college system and selective admissions standards for four-year schools also were part of the Roemer plan.

Verkuil also called for the state to appropriate more money to the predominantly black schools of Southern and Grambling State University to improve them to attract more white students. He recommended that an undetermined "fixed percentage" of the budget be set aside for enhancing the black schools.

Verkuil suggested that the court appoint a three-member committee to monitor progress.

The monitoring committee should give "the new (single) board a period of five years to eliminate the racial identifiability of Louisiana's universities," Verkuil wrote.

"If at the end of that time substantial progress is not shown, the committee should consider recommending the court more direct solutions, including court appointment of board members or direct control by the committee of the system of higher education and merger of institutions," he said.

In a news conference Tuesday, Kennedy said, "The special master said we have five years: Put up or shut up. It means we are going to have to roll up our sleeves and get to work."

State Sen. William Jefferson, D-New Orleans, who is Southern's attorney, said the recommendation "is a Solomon-like attempt to reconcile the main desires of all parties to the litigation. The governor wanted a single board, and he got that. I was pleased to see that the recommendation requires that all of the present predominantly black institutions be maintained and integrated."

If the court accepts Verkuil's plan, Jefferson said he is uncertain whether the Southern Board of Supervisors will decide to appeal the decision.

DESEGREGATION BLUEPRINT

Highlights of the special master's recommendations:

- Replace four state boards with a single superboard for management of public higher education with 17 members to be named by governor, including at least seven black members for first five years.
- Designate LSU-Baton Rouge as flagship university and classify other schools by mission and level of programs.
- Set tough admissions standards for some schools, including LSU and Southern in Baton Rouge.
- Create open-enrollment community college system of two-year schools.
- Provide substantial aid to upgrade state's four predominantly black schools.
- Limit enrollment at less selective universities such as LSU to discourage white avoidance of predominantly black schools.
- Provide admissions exceptions and scholarships for "other race" students.
- Set up a three-member committee appointed by the court to monitor progress toward desegregation.

Times - Picayune
April 30, 1989

Louisiana Politics

ON DESEGREGATING STATE'S HIGHER EDUCATION SCENE

By Jack Wardlaw
Capital bureau chief

The commission would 'give the new single board a period of five years to eliminate the racial identifiability of Louisiana's universities,' Verkuil wrote.

BATON ROUGE - The recent court-ordered report on public college desegregation contains much that could have been cribbed directly from Buddy Roemer's 1987 campaign platform.

In his run for governor that year, Roemer strongly endorsed Louisiana State University as the state's flagship university and said that other schools should redefine roles and specialties.

He called for tougher admission standards for LSU and Southern University and for a single board to govern the whole system, replacing the four boards set up in the 1974 constitution.

Roemer advocated two-year junior or community colleges, offering lower-cost education for students who might not, for one reason or another, meet the tougher entrance requirements planned for the four-year schools.

All of this (and more) is covered in the desegregation report of Paul Verkuil, a former Tulane University law school dean who is now president of William and Mary College in Virginia.

Verkuil was appointed special master in the case by the three-judge federal panel in New Orleans that is handling the year-old lawsuit on higher education desegregation. His report will be discussed with the parties to the case next month and then submitted to the judges, who will make the final rulings.

There are wide differences of opinion abut what will happen then. Will the judges simply order implementation of the Verkuil report, bypassing the legislative process? Will they reject or modify the plan? Will they wait and see what the Legislature does with Roemer's single-board proposal? Can anyone ever predict what a federal court will do?

The Verkuil report is not a carbon copy of Roemer's platform, though in highlight form it may seem that way. In addition to what Roemer has proposed, the report calls for substantial state aid to the predominantly black public universities of Southern and Grambling State, which is not envisioned in the budget Roemer sent the Legislature before Verkuil's report.

Verkuil calls for limiting enrollment at such schools as Southeastern Louisiana University in Hammond or Nicholls State University in Thibodaux, to prevent them from absorbing white students who can't meet the new entrance requirements at LSU and the University of New Orleans but who are reluctant to enroll at Southern University-New Orleans. The idea is that increased enrollment of whites channeled to SUNO by admissions standards would give that school a more balanced racial mix. If that plan has to go before the Legislature, it will touch off a dandy row.

Verkuil also calls for "other-race" scholarships to attract blacks to the mostly white schools and vice versa. This was tried from 1981 to 1988 under the old consent decree in the case, without much success.

The bottom line, as it were, is Verkuil's call for a three-member commission appointed by the court to monitor progress toward desegregation. The commission would "give the new single board a period of five years to eliminate the racial identifiability of Louisiana's universities," Verkuil wrote. "If at the end of that time substantial progress is not shown, the committee should consider recommending to the court more direct solutions, including court appointment of board members or direct control by the committee of the system of higher education and merger of institutions."

In other words, if the system hasn't been reshaped to the court's satisfaction by 1994, the feds will simply take it over. It's far from

clear to this writer that even such a drastic solution would achieve desirable results.

It is truly difficult to envision a situation in 1994 in which the three branches of Southern University and Grambling State have student bodies that reflect the state's population mix, rather than being heavily black. Note that Verkuil didn't say that goal has to be entirely achieved by then, just that "substantial progress" be shown. But can even that be done?

Then there's the question of the community colleges. Both Roemer and Verkuil agree these open-admissions schools are an essential element of the overall plan. The idea of raising admission standards at some schools won't work unless there's a place for the educationally disadvantaged pupil to get started.

But Roemer hasn't made public any plan to pay for this addition to the higher education scene, and the federal courts couldn't care less what it costs us.

The point is, there isn't nearly enough higher education money to go around as it is, let alone enough to run some more schools. Are some existing four-year universities to be converted into community colleges?

Roemer needs to clarify this point, and presumably he will once the three-judge panel issues some guidelines. Until then, everyone is waiting for the other shoe to drop!

Times - Picayune
May 3, 1989

COLLEGE PROPOSAL CRITICIZED

By Dawn Ruth
Staff writer

Education expert Paul Verkuil's plan to desegregate Louisiana's university system is too vague and will guarantee that the long-running case drags into the next century, the Justice Department said in a brief filed Tuesday.

"Our principal objection to the remedial plan is that it is not specific enough and therefore cannot be adopted as a plan that 'promises realistically to work, and promises realistically to work now,'" Justice Department lawyers said.

Verkuil, appointed by a three-judged panel to develop a desegregation plan, issued a 137-page report last month outlining a plan endorsing many of the state's original suggestions on how to end racial imbalance in the university system. The plan's centerpiece was creation of a single governing board of higher education to replace the state's four boards.

"Verkuil's plan leaves many decisions that would affect desegregation up to the new board and allows Gov. Roemer to name the board members.

Verkuil also recommended that the state spend extra money on its four predominantly black campuses for programs and facilities that might attract more whites.

All parties to the suit were allowed to file written briefs suggesting changes to Verkuil's plan Monday. Oral arguments on possible changes will be heard Tuesday.

Among the changes requested by the Justice Department:

- Appoint members to the single board from current higher education boards.

- Specify programs that should be transferred between Louisiana State University and Southern University in Baton Rouge.

- Require that Southern University of New Orleans be enhanced and made a "comprehensive" university.

- Allow the predominantly black universities to submit a list of "enhancement" projects to the court and have the court specify projects that the state must complete.

The state offered no significant objections to Verkuil's plan.

LSU attorney Shelby McKenzie said Verkuil's recommendation that seven of 17 board members should be black is unconstitutional because the representation would be disproportionate to state population.

LSU also opposed extra money for black colleges because it said state funds for colleges are insufficient.

The Board of Trustees for State Colleges and Universities didn't ask for any changes, and Southern University filed its brief after court closed Monday.

Morning Advocate
May 9, 1989

ORAL ARGUMENTS DUE ON COLLEGE DESEG PLAN

By Karen Didier
Capitol news bureau

Attorneys for the parties involved in state's college desegregation lawsuit have their final chance Tuesday to argue for changes to an integration plan proposed by a court-appointed expert.

Written proposals for changing the plan drafted by special master Paul Verkuil were submitted last week, and oral arguments are scheduled to begin at 8a.m. Tuesday in New Orleans.

Southern University and the U.S. Justice Department have suggested the most extensive amendments to the plan drafted by Verkuil, who is the president of the College of William and Mary in Virginia and a former dean of Tulane's law school.

Lawyers for the state, the Board of Regents and the Board of Trustees for State Colleges and Universities have recommended minor, mostly technical, changes in the plan. However, the LSU Board of Supervisors has suggested a couple of significant amendments.

After Tuesday's hearing, Verkuil may alter his proposal. It will then go to the three-judge federal court that has jurisdiction in the case.

Verkuil's plan, which was issued in April, hinges on the elimination of the four boards that currently govern higher education and the creation of a single management board to take their place.

He also recommended that state universities be organized into tiers, with LSU as the state's top research university with the toughest admission standards. The second tier of doctoral institutions also would have restricted admissions, but not as tough as those at LSU, and a third level of four-year schools would have the option of retaining open admissions.

Verkuil also recommended that a community college system be established in the state.

He advocated the use of enrollment caps and program transfers to foster integration.

In documents filed last week, lawyers for the Justice Department called Verkuil's plan vague and said that without specifics, more litigation is sure to follow.

Justice Department attorneys said the state's four predominantly black colleges - three in the Southern University system and Grambling State University - should be allowed to submit a list of enhancement projects to the court and have the court specify what the state must do.

Also, the Justice Department said members of the new single board should come from members of the current boards.

Southern's attorney objected to the creation of the single board, but said that should it come to be, its members should he appointed by the state Legislature and not by the governor, as Verkuil suggested.

Southern also suggested that more specific financing be included in the final plan, rather than Verkuil's recommendation that a "fixed percentage" of the state's higher education appropriations be given to the black colleges for enhancement.

LSU suggested less minority representation on the single college board in its initial term and more leeway in deciding how much money mostly black institutions would get for enhancement.

Verkuil said the new board should have 18 voting members plus a student member. For the initial five-year life of the board, he suggested that at least seven members be minorities.

Morning Advocate
June 26, 1989

JUDGES TO CONSIDER COLLEGE DESEG PLAN

NEW ORLEANS (AP) - The proposal to desegregate Louisiana's public universities will come under the scrutiny of three federal judges at a hearing Monday.

Attorneys for the state, the U.S. Justice Department and Louisiana's two predominantly black universities will argue for any changes they want in the plan drafted by a special master appointed by the judges.

There is no indication when the judges might make a final decision in the case.

Paul Verkuil, president of The College of William and Mary in Virginia, unveiled the blueprint nearly a month ago to settle a 15-year-old lawsuit filed against the state by the Justice Department.

The plan calls for creating a single board to govern higher education, instead of the four in existence now; establishing a community college system; restricting admissions at some four-year universities; and providing additional money for programs to make mostly black schools more attractive to white students.

Verkuil did not recommend closing any of the state's 14 public four-year institutions.

The lawyers also will make recommendations on Verkuil's pay, which the judges tentatively set at $61,000. He was hired in December after months of negotiations and hearings failed to resolve the desegregation dispute.

Verkuil's proposal tracks closely the recommendations of Gov. Buddy Roemer, who for more than a year has tried to get the Legislature to approve a single board of higher education. A court order, however, for a single board would take precedence over legislative wishes.

Southern University and Grambling State University, the state's two predominantly black schools, object to letting the governor appoint the 17-member board.

LSU objects to the provision that gives the board more black members than is represented in the state's population. The plan calls for seven black members instead of four or five which would jibe with census figures.

COURT ORDERS ONE BOARD TO DESEGREGATE LA COLLEGES

By John LaPlante
Capitol news bureau

A federal court on Wednesday declared the structure of Louisiana higher education unconstitutional and ordered all public colleges placed under a single board that must quickly take steps to mix the races on state campuses.

The decision by a three-judge court disbands the state's three current college systems that, according to the court, have continued the historic segregation of Louisiana colleges.

Unlike a previous legal agreement the court called a failure, Wednesday's 45-page decree sets out few specific remedies - except for the eventual merger of the LSU and Southern University law schools.

Instead the judges closely followed the advice of a court-appointed expert and gave the single board broad power to "end the racial identifiability" of state colleges to resolve a long-standing civil rights case against the state.

"The present scheme for governing (higher) education in Louisiana - three operating boards and one coordinating board - has perpetuated illegal segregation in Louisiana's higher education," U.S. Appeals Court Judge John M. Wisdom and U.S. District Judges Charles Schwartz, Jr. and Veronica D. Wicker said.

"The system of multiple boards is therefore a defect in the state's system of higher education that violates the constitution," the judges reasoned.

The court then overruled the state constitution and declared:

"Within 30 days of this order, the four boards ... shall be disbanded and their powers consolidated under a single board" with complete authority over all Louisiana colleges.

Although the board officially takes over higher education shortly before the start of the fall semester, its not expected to immediately affect the routine activities of students, faculty and staff.

Most changes ordered or suggested by the court would begin taking effect in the fall of 1990.

But the eventual changes could be dramatic, and the board has a relatively short time to make many major decisions.

The judges gave the board six months to set admission standards, review all degree programs and establish a plan for recruiting white students, faculty and staff to mostly black colleges and, in turn, recruiting black students, staff and faculty to mostly white colleges.

The board will include 17 voting members, appointed by Gov. Buddy Roemer, to staggered five-year terms, plus a non-voting student.

The court imposed no racial or other quotas on appointment of the board but maintained veto power over appointees, who must "broadly represent the racial, ethnic, gender, and geographic diversity of the state."

Roemer, who has campaigned two years for a single board, was on vacation and not available for comment Wednesday.

His attorney in the case John Kennedy, said the governor is confident he can fill the board by the Aug. 18 deadline.

"Within 30 days the single board should be up and going," Kennedy said. "We are very pleased with the decision.

(The order) has great potential to desegregate. The state of Louisiana has won. The people of Louisiana have won.

Kennedy said he doesn't know if any of the parties plan to appeal the ruling.

The U.S. Justice Department, lead plaintiff in-the case, as well as the Southern University Board of Supervisors and the Grambling Alumni Association all opposed major parts of the plan when it was proposed by the court's expert, Paul Verkuil, president of the College of William and Mary in Virginia.

Sen. William Jefferson, D-New Orleans, Southern's attorney, could not be reached for comment Wednesday.

The 45-page decision proclaims LSU the state's flagship university, enrolling only the "top echelon of graduating high school seniors"

and supporting "the greatest number of graduate and research programs."

Southern University joins the University of Southwestern Louisiana, the University of New Orleans and Louisiana Tech University in a second tier of schools awarding doctoral degrees, conducting extensive research and demanding "somewhat less selective" qualification for freshmen.

Eight other colleges are lumped into a third tier: Southern Louisiana University, Northeast Louisiana University, Northwestern State University, Nicholls State University, McNeese State University, Grambling State University, Southern at New Orleans and LSU-Shreveport. They will perform mainly as bachelor's degree-granting institutions.

Open admissions will be phased out at all four-year colleges. Students who can't meet admission standards, to be set by the board, can attend a system of community colleges that also might include the state's current vo-tech schools.

The court also appointed a three-member monitoring committee "as the only prudent way to ensure the implementation of the remedies proposed."

The committee includes former LSU Chancellor Paul Murrill, who said he had not received official word from the court on being named to the panel.

Also on the panel are two similarly qualified educators from outside the state, Franklyn G. Jenifer, chancellor of the Massachusetts Board of Regents of Higher Education, and Frank E. Vandiver, former president of Texas A&M University.

The court demands "substantial progress" within five years or the monitoring committee may be asked for "more direct solutions," including the possibility that the court or the committee will take over higher education in Louisiana.

The court said it is not washing its hands of the state until then but retains the right "to take appropriate action to enforce this order.

The Times
July 20, 1989

EDITORIALS

HIGHER EDUCATION

LET THE COURT ORDER STAND

For 15 years, almost everyone concerned with Louisiana's higher education desegregation case has squabbled without ever reaching any sort of resolution. No wonder, then, that a federal court yesterday issued an order in an attempt to settle everyone's has; it was obvious that Louisiana entities would never get it done on their own.

"Ever since Louisiana's higher education system was declared illegally segregated - the only entire state system ever so charged - effort after failed effort has been made to restructure the system.

A consent decree worked out in the early 1980s pumped millions of state dollars into predominantly black universities - partly to make up for historic neglect, partly to enhance programs and attract white students.

That was all declared a failure and thrown out by a federal court a year and a half ago. Attempts by college and university representatives, state officials and Justice Department lawyers to come up with a new plan failed, mostly because of turf battles. That's how the whole mess wound up in the courts again.

Does this, then, finally settle it? We hope so, even though last night there were rumblings from all corners that the order would be appealed. Some don't like the notion that a single board would govern higher education instead of the multiple boards the state now has. Some don't like the idea that the board would be appointed by the governor. Some don't like it because it doesn't guarantee a specific number or percentage for black representation on the board.

All these objections to the court order are, in fact, the perfect reflection of why the case wound up in court in the end: Getting consensus or even majority agreement on anything within the state -

or between the state and the U.S. Justice Department - had proved impossible.

As it is, the court-ordered plan follows almost to the letter a plan prepared by Gov. Buddy Roemer; it also tracks several independent studies' recommendations for restructuring the higher education system. It's not as if the judges and the special master, Paul Verkuil, dreamed it up out of thin air.

In addition to the single governing board, the plan would create a tiered system of universities and allow for selective admissions. It makes sense.

That should be reasons enough to stop the fighting and let the plan go into effect, but there's one more good reason, in our view: The state's colleges and universities have been in limbo on these questions for too long. Another round of arguing will only extend the uncertainties that have hovered over Louisiana's higher education. Our plea, then, is to let the court order stand and bring this issue to an end.

Lafayette Daily Advertiser
September 25, 1989

GUEST EDITORIALS

GUSTE JUMPS BACK AND FORTH

Attorney General Billy Guste continues to maintain that he jumped into the lawsuit over the desegregation of Louisiana's higher education system for one reason only: to protect the integrity of the state's constitution.

Guste's opponents, however, say he actually had other things in mind, such as courting the black vote, when he sided with the Southern University, rather than with Gov. Buddy Roemer, in the lawsuit.

A news story last week punched a hole in Guste's camouflage and exposed his true motives for all to see. It said state Sen. William Jefferson, D-New Orleans, actually wrote the initial federal court motion aimed at halting a disputed federal desegregation order.

And who does Jefferson work for? Why Southern University, of course.

Still to come is a debate over whether Roemer or Guste will represent the state before the U.S. Supreme Court when the case is heard in October. Perhaps when the High Court hears about this fiasco, it will be able to figure out who really has the best interests of Louisiana at heart.

and whether it's done by the Legislature or by a federal court is irrelevant.

Ideally, it would have been better to go through the regular process: passage of a proposed constitutional amendment by the Legislature and by the voters. But this isn't an ideal world, and in this case the state would have been well served by letting the federal panel have its way. Eventually, it probably will; but now we may be in for weeks or months of confusion before that happens.

LOUISIANA CONSTITUTION
ARTICLE IV. EXECUTIVE BRANCH

§ 8. Attorney General; Powers and Duties

Section 8. There shall be a Department of Justice, headed by the attorney general, who shall be the chief legal officer of the state. The attorney general shall be elected for a term of four years at the state general election. The assistant attorneys general shall be appointed by the attorney general to serve at his pleasure.

As necessary for the assertion or protection of any right or interest of the state, the attorney general shall have authority (1) to institute, prosecute, or intervene in any civil action or proceeding; (2) upon the written request of a district attorney, to advise and assist in the prosecution of any criminal case; and (3) for cause, when authorized by the court which would have original jurisdiction and subject to judicial review, (a) to institute, prosecute, or intervene in any criminal action or proceeding, or (b) to supersede any attorney representing the state in any civil or criminal action. The attorney general shall exercise other powers and perform other duties authorized by this constitution or by law.

Times - Picayune
August 16, 1989

THE LITTLE MAN

GUSTE'S ENTRY IN DESEGREGATION CASE STIRS THE WATERS

By Jack Wardlaw

Attorney General William J. Guste, Jr. seemed genuinely shocked last week when he started getting flak from editorial writers about his spat with Gov. Roemer on the higher education desegregation case.

Guste said he doesn't understand why he's being attacked for doing what he sees as his duty, to defend the state constitution against attempts by a federal court to override it.

Trouble is, not everybody sees the desegregation case in those terms. To many, the issue isn't the sacredness of the text of the state constitution, particularly of a higher education section that has proved virtually unworkable. The issue is: Are we going to straighten out the mess that the 1973 constitutional convention left us or are we going to dither around for another 20 years or so?

In case you've missed a chapter or two of the soap opera, in July a three-judge panel in New Orleans (acting in a desegregation case that dates back to 1974) ordered Louisiana's four higher education boards abolished and replaced by a single "superboard." The judges didn't order it done by the year 2000, they ordered it done literally by Friday - Aug. 18, 1989.

No one was more delighted than Roemer, who opposed the four-board system at CC/73 and got elected governor in 1987 on a platform to abolish it. He was initially rebuffed by the Legislature, but a special master appointed by the court in the desegregation case agreed that the only way to solve the problem of racial imbalance is to place the system under one central authority.

The court lost no time in ordering the master's report into effect, and for a while it looked like a done deal. The Senate called a special meeting for Thursday to vote on confirmation of Roemer's 17

nominees to the new board, and the Senate and Governmental Affairs Committee began hearings on Monday.

Enter Billy Guste. After the three-judge panel handed down its reorganization plan, Guste jumped in and appealed it to the U.S. Supreme Court (as did the Southern University Board of Supervisors, which doesn't want to be merged out of existence). As a result, Justice Byron White stayed the lower court judges' order, at least until the U.S. Justice Department can respond to Guste's appeal.

At this writing, it remains unclear if the stay means that the whole issue will be delayed until the Supreme Court comes back to work in October. But it does make the Friday deadline set by the three judge panel look increasingly iffy.

Guste's move to appeal the ruling drew the editorial wrath of newspapers in Baton Rouge and Alexandria, and it touched off a dandy feud with Roemer. The newspapers chastised Guste for coming in, apparently out of nowhere, to derail a much-needed reform. Roemer chimed in Tuesday, calling Guste the "invisible man."

Guste said he's been in the case since it started in 1974, and as the state's chief legal officer, he's duty bound to try to preserve the state's constitution from being rewritten by a federal court. Later, he said he was removing John Kennedy, Roemer's lawyer, as the state's lead counsel in the case and taking back the job himself.

Part of Guste's rationale is that Louisiana has never admitted the Justice Department's chief contention: that the state is continuing to operate a racially segregated education system. Ironically, Roemer and Kennedy share that view—but they say that's no reason to delay putting the court ordered superboard into effect.

Another irony is that it was Guste who originally authorized Kennedy to argue the state's case in federal court, which he did so successfully that the superboard was within a few days of becoming a reality.

Guste, who has been in politics since the 1960s, should not have been surprised at the reaction to his decision to appeal the case. There are those in Louisiana who have been working for a single board since well before the Southern board was created at the 1973 convention. In their view, the need to unify higher education is the larger issue,

THE JUDICIARY ARTICLE OF THE LOUISIANA CONSTITUTION of 1974

Lee Hargrave*

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* Professor of Law, Louisiana State University. Co-ordinator of legal research for the Constitutional Convention of 1973, conducting research for the Judiciary Committee. Though this article is based in part on the author's experience in working with CC/73, it is not an official statement or commentary of the convention or the committee. The opinions and statements are solely those of the author.

INTRODUCTION

Article V on the judiciary makes few basic changes in the existing court system. In some respects, this is unfortunate for many reforms were concerning a judge's license to practice under the general bar association disciplinary procedures.

OTHER COURT RELATED OFFICIALS

Attorney General and District Attorney

Article IV, Section 8, establishes the Department of Justice and continues provisions for an attorney general elected statewide for a four-year term.[290] Little dispute arose over the provision making him "the chief legal officer of the state" and continuing his powers in civil matters, but much controversy was generated by proposals establishing his powers in criminal matters, particularly his relationship with district attorneys.

Both the Committee on the Executive Branch and the Judiciary Committee proposed sections to govern the attorney general, the Executive proposal granting him broader authority.[291] That proposal reached the convention floor first, but the section governing the attorney general was amended to delete all reference to his powers, leaving the matter open until the Judiciary Committee proposal came before the convention.[292] It was the Judiciary Committee's formula

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[290] See La. Const. art. VII 55-57 (1921).

[291] The Executive proposal was *Committee Proposal* 4, § 8, in JOURNAL, July 6, 1973 at 12. The Judiciary proposals were *Committee Proposal* 6, §§ 28, 29, in JOURNAL, July 6, 1973 at 17 and *Committee Proposal* 21, §§ 26, 27, in JOURNAL, Aug. 22, 1973 at 9, and Aug. 23, 1973 at 6. MINUTES, Apr. 13, 1973 at 3: "Mr. Edwin O. Ware, District Attorney, wrote Judge Dennis a letter stating that at the annual convention of the Louisiana District Attorneys' Association held in New Orleans in March, the district attorneys and assistants voted unanimously in favor of the Judiciary Committee writing the articles dealing with district attorneys."

[292] PROCEEDINGS, Aug. 8, 1973 at 46-50. Delegate Camille Gravel explaining his amendment: "[A]ll that this does is to create the department and to constitutionally declare that the attorney general shall be head of that department and the state's chief legal officer. All of the matters relating to the functions, powers, and duties of the department and of the office of attorney general will be relegated to future consideration when we consider the judiciary article." *Id.* at 47.

establishing the powers of the office that became the basis for debate and that was ultimately adopted by the convention. Later, after referral to the Committee on Style and Drafting, those provisions were transferred from the Judiciary Article to Article IV on the Executive Branch.[293]

Underlying the struggle between the attorney general and the district attorneys over the former's authority in criminal matters was the uncertainty of the jurisprudence construing those powers under the prior constitution, particularly the power "to institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal...." and to exercise "supervision over the several district attorneys throughout the State...."[294] *Kemp v. Stanley*[295] did prevent an attorney general from "superseding" or ousting the district attorney in a criminal case, but did so in a mass of complex original and rehearing opinions with several concurrences and dissents that established no clear construction of the constitutional provision and provided no clear guide as to the relationship between the attorney general and the district attorney. That case, and the varying constructions of it, became the background of discussion of the attorney general's power to supervise the district attorneys, to supersede them in pending cases, and to institute criminal proceedings on his own authority.

The Executive proposal allowed the attorney general to institute or intervene in criminal proceedings on his own initiative, to supervise the district attorneys and to supersede a district attorney for cause.[296] The Judiciary proposal was unclear as to the power to institute prosecutions, omitted the power to supervise the district attorneys and allowed the attorney general to supersede a district attorney only for

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[293] *Id.*, Jan. 15, 1974 at 86-89.

[294] La. Const. art. VII, § 56 (1921).

[295] 204 La. 110, 15 So. 2d 1 (1943).

[296] *Committee Proposal* 4, § 8, in JOURNAL, July 6, 1973 at 12. The relevant language was: "As may be necessary for the assertion or protection of the rights and interests of the state, the attorney general shall have the authority to: (1) institute, and prosecute or intervene in any legal actions or other proceedings, civil or criminal; (2) exercise supervision over the several district attorneys throughout the state; and (3) for cause, supersede any attorney representing the state in any civil or criminal proceeding."

cause when authorized by a court.[297] Convention debate on these proposals was preceded by the unusual procedure of allowing the attorney general and the president of the district attorneys association to address the group.[298] Their presentations were devoted in large part to the impact of *Kemp v. Stanley*.

As the convention began to debate the proposals, it first defeated an amendment that had the effect of making no constitutional grant of power to the attorney general and allowing the legislature to regulate his powers.[299] Also defeated was an amendment proposed by delegates who served on the Committee on the Executive Branch that would have substituted their committee's proposal on the attorney general for that of the Judiciary Committee.[300] It was defeated by a vote of 24-97, the delegates apparently agreeing with Delegate I. Jackson Burson, who in opposition to the amendment stated:

> Now most of the remarks that I have heard in advancing the power of the attorney general to supersede local district attorneys seem to assume that a statewide elected official will be inherently more virtuous than a locally elected official. I challenge that assumption.[301]

Debate continued on the details of the judiciary proposal. An attempt was made to restrict the attorney general even more by deleting his power to supersede a district attorney, even for cause. The amendment was defeated, the convention opting for some control over local district attorneys, albeit subject to court review and not at the

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[297] *Committee Proposal* 21, § 27, in JOURNAL, Aug. 23, 1973 at 6; *Committee Proposal* 6, § 29, in JOURNAL, July 6, 1973 at 17. The latter provided in part: "As may be necessary for the assertion or protection of the rights and interests of the state, the attorney general shall have authority to: (1) institute and prosecute or intervene in any civil actions or proceedings; (2) advise and assist, upon request of a district attorney, in the prosecution of a criminal case; and (3) for cause when authorized by the court of original jurisdiction in which any proceeding is pending, subject to judicial review, supersede any attorney representing the state in any civil or criminal action."

[298] PROCEEDINGS, Aug. 22, 1973 at 77-78.

[299] *Id.* at 91, 92.

[300] *Id.* at 93-100.

[301] *Id.* at 96.

attorney general's discretion.[302] As Delegate Walter G. Arnette stated:

> I think if a district attorney is not doing his job, someone ought to step in, someone ought to take care of the people of that district. If there is organized crime in the area, if there is crime that is not being prosecuted, someone ought to step in and have the power to prosecute it.[303]

Also defeated was another attempt to grant the attorney general power to supervise the district attorneys.[304] However, the constitution did adopt an amendment sponsored by the chairman of the Judiciary Committee that clarified the language of the proposal to make clear that the attorney general could, for cause, institute a prosecution and not be limited to simply intervening in prosecutions already commenced.[305]

Thus, in a battle between state power and local power, the convention adopted a compromise. Some checks and balances remain between the attorney general and the district attorneys, with the courts being required to intervene when the two authorities come into conflict. And, in view of some readings of *Kemp v. Stanley* as not allowing the attorney general to supersede a district attorney without cause, some delegates thought they were continuing the existing state of the law. In any event, Article IV, Section 9 makes the attorney general "the chief legal officer of the state" and then more particularly enumerates that "[a]s necessary for the assertion or protection of any right or interest of the state, the attorney general shall have authority

(1) to institute, prosecute, or intervene in any civil action or proceeding;

(2) upon the written request of a district attorney, to advise and assist in the prosecution of any criminal case; and

(3) for cause, when authorized by the court which would have original jurisdiction and subject to judicial review, (a) to institute, prosecute, or intervene in any criminal action or

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[302] *Id.*, Aug. 23, 1973 at 59-69.

[303] *Id.* at 66.

[304] *Id.* at 69-74.

[305] *Id.* at 93, 94. *See also* PROCEEDINGS, Jan. 15, 1974 at 82- 84.

> proceeding, or (b) to supersede any attorney representing the state in any civil or criminal action.

It also provides that the attorney general "shall exercise other powers and perform other duties authorized by this constitution or by law."

The provision that the attorney general shall be the chief legal officer of the state is new. It comes from the Executive proposal, but neither the committee comments nor the convention debate provide a history of the implications of that language.[306] Referring to him as the "chief" legal officer certainly implies control over other legal officers and would seem to give him that control. But to the extent that this general power conflicts with the more specific enumeration of powers in the next paragraph, the general would have to give way to the specific. In areas where no conflict exists, however, the language seems to mean that he does have control over other legal officers of the state.

Subsection (1) in referring to his power to institute, prosecute, or intervene in any civil action or proceeding is a continuation of prior provisions and is unlimited.[307] Subsection (2), which raised little controversy, refers to his authority to "advise and assist in the prosecution of any criminal case" when requested by a district attorney. By its terms, the provision requires that the request be in writing.

It is Subsection (3) that establishes the attorney general's power to act on his own authority in criminal matters. If the requirements of "cause" are met, he can "institute, prosecute, or intervene in any criminal action or proceeding." The power to institute refers not only to filing bills of information, but also to presenting evidence to a grand jury in cases where a grand jury indictment is desirable or necessary.

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[306] The provision comes from *Committee Proposal* 4, § 8, in JOURNAL, July 6, 1973 at 12, by the Executive Department committee. The committee comments simply said, "The attorney general is made the states' chief legal officer' without further explanation." *Id.* The initial Judiciary Committee Proposal did not use the chief legal officer description, but rather paraphrased language from the 1921 Constitution. *Committee Proposal* 6, §§ 28, 29, in JOURNAL, July 6, 1973 at 17. The Judiciary's later proposal, a substitute for the first, *Committee Proposal* 21, § 27, in JOURNAL, Aug. 23, 1973 at 6, used the chief legal officer formula of the Executive proposal without explanation.

[307] La. Const. art. VII, § 56 (1921). *See Ricks v. Department of State Civil Serv.*, 200 La. 341, 8 So. 2d 49 (1942); *Saint v. Allen*, 172 La. 350, 134 So. 246 (1931).

This is so because the reference is not only to instituting an "action" in the sense of a court proceeding, but also to instituting a "proceeding" before a grand jury. Under this grant, he can prosecute a case himself, without reference to a district attorney, or he can intervene and not act as sole prosecutor. If the cause requirement is met, he can also supersede a district attorney in any criminal action which has already been commenced. This subsection also recognizes his power to supersede any attorney representing the state in any civil action, again if the cause requirement is met.[308]

The central problem then becomes defining the "cause" which a court must find before it authorizes the attorney general to take the measures described above. The authorization must come from the court "which would have original jurisdiction" over the underlying criminal conduct or action about which or in which the attorney general wishes to exercise his authority, and is subject to review by the appellate courts.

The cause requirement is related to the introductory phrase of the paragraph, "[a]s necessary for the assertion or protection of any right or interest of the state," indicating that the "cause" must be associated with the fact that a right or interest of the state is not being satisfactorily represented or asserted by a district attorney. The record of the debate is replete with statements that the power of the attorney general is the power to act when a local district attorney is not fulfilling his duties satisfactorily, as when he is not prosecuting cases that ought to be prosecuted.[309] Reference was made to citizens filing complaints with a district attorney and failing to obtain action; in such a case, the implication was that the attorney general could act. It was pointed out that use of the malfeasance laws was not a practical means of proceed-

[308] In recognizing the power to supersede, the new constitution incorporates language which the prior constitution did not contain. But *Kemp v. Stanley*, 204 La. 110, 15 So. 2d 1 (1943), indicates that the power to supersede for cause did not exist under the prior provision.

[309] PROCEEDINGS, Aug. 23, 1973 at 58, 66, 77. Chairman Dennis stated: "I think the committee intended all along to make certain that there was an abuse and the district attorney was not doing his job, that the attorney general could go into court and ask for a court order and initiate a prosecution." *Id.* at 77. Delegate Chris Roy indicated that "if a person committed a crime, no question about it and a D.A. for one reason or another did not see fit to bring a bill of information against him or present it to the grand jury" that was grounds for the attorney general action. *Id.*

ing against a district attorney if it were that district attorney alone who could bring such a prosecution; the attorney general would be the only check on him in such a case.

The cause requirement can also be traced to *Kemp v. Stanley*, in which statements were made in the original opinion and in concurring opinions on rehearing that while the attorney general could not have total discretion in superseding a district attorney, he could supersede if his actions were not capricious and arbitrary, but had some basis supporting his action. There, the court pointed out the district attorney had not been neglectful of his duty in any way, so there was no cause for the attorney general to intervene. The implication is that had there been neglect, the attorney general action would have been permissible.[310] In some matters involving statewide organized criminal activity, cause may exist because the resources and powers of district attorneys, who are limited largely to acting with respect to offices occurring in their judicial districts, may be unsatisfactory to investigate and prosecute the large scale criminal activity.[311]

That the cause requirement is not an insurmountable one is shown by convention rejection of an amendment to require a stronger standard, "proven cause," before the attorney general could act. The sponsor indicated he did not want "alleged cause" to be sufficient, but the convention rejected the amendment by a vote of 55-60 and chose the lesser standard.[312] It also rejected an amendment to require that in multi-member district courts, a majority of the judges must concur to authorize attorney general intervention; the district court acting normally through a single judge can authorize the action.[313]

Though the section does not address itself directly to the investigatory powers of the attorney general, it implies the existence of

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[310] *See id.* at 58. Delegate Burns stated, "Mr. Kilbourne, didn't the Supreme Court hold in the *Kemp* case that the attorney general could not go into a district without it (sic) showing legal cause?" *See also id.* at 66.

[311] Delegate Arnette spoke of keeping a mechanism for state action and not relegating state law enforcement to federal agencies: "Are you going to have the federal government coming in and prosecuting those people under some federal law, and I don't think that is the way, it ought to be." (sic) *Id.* at 66.

[312] *Id.* at 88-93.

[313] *Id.*

those powers. The attorney general must be able to amass the factual showing necessary for establishing cause to act and must be able to investigate criminal matters to establish those facts. The section also fails to specify the procedure to be followed when requests for authorization are made; it would then be left to the legislature to establish that procedure and provide, for example, when such authorization can be *ex parte* and when contradictory hearings with a district attorney are required. In terms of procedure, one could easily raise many problems associated with having a "mini-trial" between the attorney general and a district attorney revolving around the conduct of a future defendant before the same judge who might have to sit at the ultimate trial of the defendant. In fact, one could raise many other problems with the whole concept. But, this accommodation between the state interest and the local interest was a hard-fought political compromise reflecting political realities, and it is in effect.

Though Section 8 in the last paragraph allows the legislature to grant the attorney general additional powers and duties beyond those enumerated, such legislation cannot alter the constitution's basic ordering of the relationship between the district attorneys and the attorney general. This is because of the provision of Article V, Section 26: "Except as otherwise provided by this constitution, a district attorney shall have charge of every criminal prosecution by the state in his district, be the representative of the state before the grand jury in his district, and be the legal advisor to the grand jury." The exception clause refers to the constitution's recognition of the powers of the attorney general provided in Article IV, Section 8, and does not include provisions otherwise that are *established by law*. Thus, while the legislature can provide for additional powers and duties of the attorney general, such legislation cannot alter the district attorney's powers as stated in Section 26. Of course, additional powers with respect to district attorneys can be granted to the attorney general, so long as the former's constitutional enumeration of powers is not abridged.

The district attorney remains a constitutional officer, with one elected in each judicial district for a term of six years.[314] The qualifications of the office parallel those of judges – admitted to the practice

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[314] LA. CONST. Art. V, § 26. *See* La. Const. art. VII, §§ 58-64 (1921).

of law for five years preceding election and residence in the district for two years.[315] The experience requirement is changed to five years from the prior constitution's three-year requirement; however, the new document deletes altogether the prior requirement assistants to the district attorney have three years experience in the practice of law.[316]

Section 26(C) does provide that no district attorney or assistant "shall appear, plead, or in any way defend or assist in defending any criminal prosecution or charge. A violation of this Paragraph shall be cause for removal."[317] However, the constitution does not prevent a district attorney from practicing law and handling civil matters. An amendment to prohibit all law practice by district attorneys failed, though the debate makes it clear that the legislature can in the future impose that restriction.[318]

As proposed by the committee, the section did not specify the powers and duties of the district attorney, just as the prior constitution had not. Though the convention did not act to add a statement of powers and duties when it considered the section on the district attorney, it did adopt one by a rider to the section regulating grand juries.[319] That statement of powers was later added to Section 26 on recommendation of the Committee on Style and Drafting.

The statement of powers and duties in Section 26(B) tracks the language of the Code of Criminal Procedure; his power to "have charge of every criminal prosecution by the state in his district" comes from article 61, and the statement that he "be the representative of the state before the grand jury in his district and be the legal advisor to the grand jury" comes from article 64. The exception clause was included "to make it possible for the attorney general, when he supersedes a district attorney, to have charge of criminal prosecutions."[320]

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[315] *See* LA. CONST. art. V, §§ 24, 26.

[316] *See* LA. CONST. art. VII, § 61 (1921). An amendment that sought to require three years of experience for assistants was defeated. PROCEEDINGS, Aug. 23, 1973 at 104-07.

[317] *See* La. Const. art. VII, § 63 (1921).

[318] PROCEEDINGS, Aug. 23, 1973 at 109-23.

[319] *Id.*, Aug. 24, 1973 at 124-33.

[320] *Id.* at 126.

As originally adopted, the provision gave the district attorney charge of "every criminal prosecution in his district." An amendment was adopted to have the phrase read instead "prosecution by the state in his district" to make clear he would not have charge of prosecutions by municipalities and other subdivisions of the state.[321] The author stated: "... we are referring to the district attorneys' powers only to state prosecutions and not to municipal or city prosecutions for violation of city ordinances."[322] Thus, the district attorney must have control of all prosecutions for violation of state law within his district, but he does not have that control with respect to prosecution for violations of city ordinances. Of course, the provision does not require that the district attorney prosecute all cases involving state law. Other persons, including city prosecutors, can be allowed to do so, so long as the district attorney retains control of the course of the prosecution.

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[321] *Id.* at 136.

[322] *Id.*

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Deletes provision (Art. IX, § 3) on removal by address of legislature.

Section 25. Removal by Suit; Officers Subject; Commencement of Suit.

Section 25. The legislature shall provide for the removal by suit of any state, district, parochial, ward, or municipal officer except the governor, lieutenant governor, and judges of the courts of record.

Source: La. Const. Art. IX, §§ 6, 7 (1921).

Comment: Replaces present provisions by requiring legislature to enact laws for removal of public officials by suit. Removes detail from present constitution.

Section 26. Recall.

Section 26. The legislature shall provide for the recall by election of any state, district, parochial, ward, or municipal officer except judges of the courts of record. The sole issue at any recall election shall be whether such officer shall be recalled.

Source: La. Const. Art. IX, § 9 (1921).

Comment: Rewords present provision relating to recall of public officials to require legislature to enact laws for recall by election. (See R.S. 42:341-357).

COMMITTEE REPORT WITH RESPECT TO COMMITTEE PROPOSAL No. 4–

ARTICLE IV. EXECUTIVE DEPARTMENT

Section 1. Composition

Section 1. (A) The executive branch shall consist of a governor, lieutenant governor, secretary of state, attorney general, treasurer, and all other executive offices, agencies, and instrumentalities.

(B) All offices, agencies, and other instrumentalities of the executive branch of state government and their respective functions,

powers, and duties and responsibilities, except for the offices of governor and lieutenant governor, shall be allocated according to function, within not more than twenty departments.

Source: La. Const. Art. V. §§ 1, 18; Art. VII, § 55; Art. XII, § 5 (1921).

Comment: The 1921 Constitution provides for an "executive department" of state government composed of 10 officials, nine of whom are elected. The constitution also provides for an elected attorney general who is an officer of the judicial department, and an elected superintendent of education.

The proposed section defines the "executive branch of state government as including five statewide elected officials and all other agencies, offices, and instrumentalities having executive functions. Deleted as elected officials are the comptroller, register of the land office, commissioner of insurance, commissioner of agriculture, custodian of voting machines, and superintendent of education. The commissioner of conservation is no longer listed as a constitutional officer to be appointed by the governor. The attorney general is classified as an executive rather than a judicial officer. The proposed section also provides for a maximum of twenty departments in the executive branch to be grouped according to function.

Section 2. Qualifications.

Section 2. (A) To be eligible for any statewide elective office a person must have attained the age of twenty-five years by the date of his election and be a citizen of the United States and of this state for at least five years immediately preceding the date of his election. He shall hold no other public office, except by virtue of his office, during his tenure in office.

(B) The attorney general shall have been admitted to the practice of law in this state for at least the five years immediately preceding his election.

Source: La. Const. Art. V, § 3; Art. VII, § 56; Art XIX, § 4 (1921).

Comment: The 1921 Constitution provides that no person shall be eligible to the offices of governor and lieutenant governor who is "less than thirty years of age", or who has not "for at least the ten years preceding his election" been a citizen of both the state and the United Sates, or who "holds office under the United

States at the time of the election". The attorney general is required, by the 1921 Constitution to be "learned in the law", and to have "resided and practiced law" as a "duly licensed attorney" in the state for "at least the five years" preceding his election. These officials and all other statewide elected officers are subject to a general constitutional prohibition against dual office-holding; otherwise, there are presently no constitutional eligibility requirements for eight of the eleven elected executive officers.

The proposed section sets the minimum age for eligibility to all statewide elective positions at twenty-five, and the period of state and national citizenship at five years immediately preceding election. The provision against dual office-holding is extended to all offices except those held ex oficio. The proposed section also requires that the attorney general shall have been admitted to the practice of law in Louisiana for at least five years immediately preceding his election.

Section 3. Elections and Terms.

Section 3. (A) The governor, lieutenant governor, secretary of state, attorney general, and treasurer shall each be elected statewide for a term of four years by the electors of the state, at the time and place of voting for members of the legislature. A person who has served as governor for more than one and one-half terms in two consecutive terms shall not be elected governor for the next succeeding term.

(B) The returns of the election of such officials shall be transmitted to and be promulgated by the secretary of state in a manner as may be provided by statute. The person having the greatest number of votes for each office shall be declared elected.

(C) If two or more persons have an equal, and the highest number of votes for an office, they shall draw lots to determine the result. The secretary of state shall arrange for the drawing of lots within ten days after the election results are promulgated, and the decision as to the winner shall be final and conclusive. Election contests shall be decided by the courts as may be provided by statute.

(D) The term of office of each elected official shall begin at noon on the second Monday in March next following the election.

(E) No official shall be elected statewide, except as provided by this constitution.

Source: La. Const. Art. V, §§ 2, 3, 4, 18; Art. VII, § 55; Art. XII, § 5 (1921).

Comment: The section provides that all statewide elected officials in the executive branch shall be elected to serve four-year terms.

In Paragraph (A) the elective offices of comptroller, register of the land office, commissioner of agriculture, commissioner of insurance, custodian of voting machines, and superintendent of education are deleted from the source provisions in conformity with provisions of Section 1.

An elected governor continues to be prevented from serving from more than two consecutive terms. The provision that a person succeeding to the governorship, with more than one-half a term remaining, can serve only one consecutive term is new.

In Paragraph (B) the secretary of state rather than the legislature as in the source provision promulgates the election returns of all statewide elective officers.

Paragraph (C) which provides that tie votes shall be decided by drawing of lots by the two candidates receiving the same and highest number of votes is new.

In Paragraph (D) the time of taking office for executive officers is changed from the first day following announcement of their election by the legislature, as provided in the 1921 Constitution, to noon on the second Monday in March following their election. (Note: The Schedule must provide that incumbent terms are not affected by this change.)

Paragraph (E) is new, and provides that no official shall be elected statewide except those named in the constitution.

Section 4. Compensation.

Section 4. (A) The compensation of each elected official within the executive branch shall be fixed by the legislature and shall not be increased or decreased for the term for which the official is elected. No state official shall receive a salary in excess of that paid to the governor.

(B) The lieutenant governor when acting as governor shall receive the same salary as the governor, and an appointed assistant when acting as an elected official shall receive the same salary as the elected official.

Source: La. Const. Art. III, § 34; Art. V, §§ 5, 7, 20; Art. VII, § 57 (1921).

Comment: The 1921 Constitution sets the salaries of constitutional officers, and provides that the salary of any public officer may be changed by a two-thirds vote of the membership of each house of the legislature. The present constitution also provides that the lieutenant governor when discharging the duties of governor shall receive the same compensation as the governor.

The proposed revision authorizes the legislature to fix the salary of each elected official within the executive branch. The revision prohibits an increase or decrease in salary for the term for which the official is elected. The proposed section further provides that no state official shall receive a salary in excess of that paid to the governor.

The proposed section also provides that compensation of constitutional successors to elected officials in the event of vacancies, absences, or inability shall be the same as that of the elected official.

Section 5. Powers and Duties of Governor.

Section 5. (A) Executive Authority. The governor shall be the chief executive officer of the state and shall faithfully support the constitution and laws of the state.

Source: La. Const. Art. V, §§ 2, 14 (1921).

Comment: This paragraph changes the source provision that the "supreme executive power" is vested in the governor and, instead, designates him as the state's "chief executive officer". The source provision requiring the governor to take care that the "laws be faithfully executed" is changed to require him to "faithfully support the constitution and laws of the state".

(B) Legislative Reports and Recommendations. The governor shall at the beginning of each regular session of the legislature, and may at other times, make reports and recommendations and give

information to the legislature concerning the affairs of state, including its complete financial condition.

Source: La. Const. Art. V, § 13 (1921).

Comment: The 1921 Constitution requires the governor to give periodic reports to the legislature concerning affairs of the state and to recommend measures for its consideration.

The proposed section requires the governor to make such reports and recommendations to the legislature at the beginning of each regular session, including information on the financial condition of the state. He may make such reports and recommendations at other times.

(C) Reports and Information. All department heads shall provide the governor with reports and information in writing or otherwise request by him on any subject relating to their respective departments excepting matters relating to investigations of the governor's office.

Source: La. Const. Art. V, § 13; Art. VI, § 39 (1921).

Comment: The 1921 Constitution permits the governor to require written information and financial reports from all agencies in the executive branch of state government and from certain local units of government.

The proposed section requires "department heads" to provide the governor with information on their departments when so requested. Information on matters relating to investigations of the governor's office is expected from the requirement.

(D) Operating Budget. The governor shall prepare the state's annual operating budget, and shall transmit copies thereof to the legislature at least two weeks prior to the first day of each annual session. Upon adoption of the operating budget by the legislature, it shall become the official state budget and shall be executed and administered by the governor. Total appropriations for the year shall not exceed annual revenues as anticipated by the governor in the operating budget.

Source: New.

Comment: The provision requires the governor to prepare, execute, and administer the state budget which he is to present to the legislature at least two weeks before the first day of each annual session. Total annual appropriations shall not exceed annual

anticipated revenues as determined by the governor in the operating budget.

(E) Capital Budget. The governor shall prepare annually a five-year capital program and shall submit to each regular session of the legislature a proposed capital budget as provided by statute implementing the first year of the program. All capital projects approved by the legislature shall be made a part of the capital budget, and the operating budget for each year shall provide for amortization of the cost of each such capital project.

Source: New.

Comment: The provision requires the governor to prepare annually a five-year capital program and a capital budget which shall include all capital projects. The annual operating budget is to provide funds for amortization of capital costs.

(F) Pardon, Commutation, Reprieve, Remission. Except in cases of conviction upon impeachment, the governor may reprieve, may grant commutation of sentence, and may pardon those convicted of offenses against the state and may remit fines and forfeitures imposed for such offenses. In addition, the legislature may provide additional methods for the foregoing and other post-conviction remedies.

Source: La. Const. Art. V, § 10 (1921).

Comment: The 1921 Constitution grants the governor power to grant reprieves for all offenses against the state. Except in cases of impeachment or treason, he is empowered to grant pardons, commute sentences, and remit fines and forfeitures on recommendation of a majority of a pardon board consisting of the lieutenant governor, attorney general, and the presiding judge of the sentencing court. The governor may, under present law, grant temporary reprieves for treason, but the final pardoning power for this crime is vested in the legislature. The source provision requires automatic pardons for first-offender felons upon completion of their sentence.

The proposed section permits the governor to reprieve, grant commutation of sentence, and pardon those convicted of offenses against the state, except in cases of conviction upon impeachment. The governor also may remit fines and forfeitures. The legislature is authorized to provide additional methods for post-

conviction remedies. The provision for a three-man pardon board is deleted from the present source.

(G) Signature on Bills; Veto. The date and time when each bill passed by the legislature is delivered to the governor shall be entered thereon. He shall then have thirty calendar days within which to act on it. If he approves, he shall sign it. If he disapproves, he shall veto it, giving his reason therefor, and if the legislature is in session, he shall return it to the house in which it originated within twenty-four hours. If he fails to veto within the time otherwise provided by this constitution, it shall become law.

Source: La. Const. Art III, § 82; Art. V, §§ 15, 17 (1921).

Comment: The source provisions require that the governor sign all bills passed by both houses of the legislature. Certain legislative documents, such as resolutions and proposed constitutional amendments, are specifically exempted from requiring his signature. Presently, the governor must act on a bill within ten days after he receives it; otherwise, it becomes law. Procedural details for vetoing, overriding vetoes, and promulgation of signed legislation are set forth in the source provisions.

The proposed section revises the present law by deleting all references to legislative action on vetoes, with the understanding that these provisions will appear in the proposed article dealing with the legislature. It is also assumed that the provision exempting legislative documents from gubernatorial signature will be included in the legislative article. As in the present law, the proposed section provides that bills sent to the governor must be documented on receipt of their delivery to the governor, and reasons must be given for his vetoes. Under the new provision the governor has thirty rather than ten days in which to act; if he fails to act within the time limit, the bill becomes law.

(H) Appropriation Bills. (1) The governor may veto any line item in an appropriation bill. The items vetoed shall be void unless the veto is overridden as prescribed for the passage of any bill over a veto.

(2) The governor shall either veto line items, or use other means provided in the bill, in order that total appropriations for the year shall not exceed anticipated revenues for the year.

Source: La. Const. Art. V, § 16 (1921).

Comment: Paragraph (1) which permits the governor to veto line items in an appropriation bill restates that source provision without substantive change. Paragraph (2) requires the governor either to veto line items in an appropriation bill, arouse other means given in the bill to assure that total appropriations for the year do not exceed anticipated revenues.

(I) Appointments. (1) The governor shall appoint, subject to confirmation by the Senate, the heads of all departments in the executive branch whose election or appointment is not otherwise provided for by this constitution and all members of boards and commissions in the executive branch whose election or appointment is not otherwise provided for by this constitution or by statute.

(2) Should the legislature be in session, the governor shall submit for confirmation by the Senate the names of those appointed within forty-eight hours after the appointment is made. Failure of the Senate to confirm an appointment prior to the end of the session shall be equivalent to rejection.

(3) Should the legislature not be in session, the governor may make interim appointments which shall expire at the end of the next session of the legislature unless submitted to and confirmed by the Senate during such session.

(4) A person not confirmed by the Senate shall not be appointed to the same office during any recess of the legislature.

Source: La. Const. Art. IV, § 1(a); Art. V, §§ 8, 10; Art. VI, § 22(e); Art. VIII, § 18 (1921).

Comment: The 1921 Constitution requires the governor to appoint, with senatorial confirmation, constitutional officers whose appointment or election is not otherwise provided for in the constitution. The legislature is permitted to provide the mode of filling statutory offices. The proposed section requires the governor to appoint, with senatorial confirmation, all statutory and constitutional executive department heads and all boards and commission members whose election or appointment is not otherwise provided for by the constitution or by statute.

Under the present law commissions must be signed by the governor and countersigned by the secretary of state. The gover-

nor is authorized to make recess appointments where not otherwise provided for in the constitution. Commissions granted for recess appointments are to expire at the end of the next legislative session. Failure of the governor to send a name to the Senate is equivalent to rejection, and persons rejected cannot be appointed to the same office during a Senate recess. The proposed section is substantially the same as the present law, except that should the legislature be in session, the governor must submit names for Senate confirmation within forty-eight hours after the appointment is made. Failure of the Senate to confirm an appointee before the end of a session is equivalent to rejection. The provision requiring signatures on commissions has been selected.

(J) Removal. The governor may remove from office those whom he appoints, except those appointed for a term fixed by this constitution or as may be fixed by statute.

Source: New.

Comment: Under the present constitution the governor has no general authority to remove those whom he appoints. Appointed officers are subject to constitutional removal by impeachment, recall, and removal by suit in district courts. (See 1921 Constitution, Art. IX, § 1).

The proposed section allows the governor to remove without cause those whom he appoints, except those appointed for fixed terms.

(K) Commander-in-Chief. The governor shall be commander-in-chief of the armed forces of the state, except when they are called into service of the federal government. He may call out the armed forces of the state to preserve law and order, to suppress insurrection, to repel invasion, or in other times of emergency.

Source: La. Const. Art. XVII, § 2 (1921).

Comment: The proposed section restates the source provision without substantive change. Authority is granted to the governor to call out the militia for any emergency as well as for the specifically named purposes of preserving law and order, suppressing insurrection, and repelling invasions.

(L) Extraordinary Session. (1) The governor may convene the legislature into extraordinary session by issuance of a proclamation to the legislature at least five days prior to the convening of the session. The proclamation shall state the specific subjects to be considered, the date and time the legislature is to convene, and the number of days for which the legislature is convened. The subject matter of the session may be amended, by proclamation to the legislature, until forty-eight hours prior to the hour at which the legislature convenes. The power to legislate, under the penalty of nullity, shall be limited to the subjects specially enumerated in the latest proclamation convening such extraordinary session. The session shall be limited to the time named therein, and shall not exceed thirty days.

(2) The governor may convene the legislature in extraordinary session without prior notice or proclamation on occasions of public emergencies caused by epidemics, attacks by the enemy, or public catastrophe.

Source: La. Const. Art. V, § 4 (1921).

Comment: The present constitution permits the governor to convene the legislature in special session in cases of emergencies and on other occasions as he sees fit, and requires him to do so when petitioned by the legislature. Procedural details concerning petitions, notices, and proclamations are given. Special sessions, except in cases of emergency, are limited to 30 days and the power to legislate is confined to the subjects enumerated in the call. When the governor convenes the legislature into special session on his own initiative, except for emergencies, he must give five days notice to the legislature.

The proposed revision relates only to special sessions called by the governor and deletes all references to procedures whereby the legislature can convene itself into special session. It is assumed that power of the legislature to convene itself will be provided in the legislative article.

The governor, under the proposed revision may convene the legislature in emergencies without prior notice or proclamation. He may do so at other times by issuing a proclamation to the legislature at least five days prior to the convening of the session. The sessions are to be limited by the times in the proclamation

and the proclamation cannot be amended for a 48-hour period prior to the hour at which the legislature convenes. Special sessions continue to be limited to 30 days. Much of the procedural detail concerning calls for special sessions has been clarified or deleted.

Section 6. Powers and Duties of the Lieutenant Governor.

Section 6. The lieutenant governor shall serve ex officio as a member on every committee, board, and commission on which the governor serves, exercise the powers delegated to him by the governor, and have such other powers and perform such other duties in the executive branch as may be authorized by this constitution or provided by statute.

Source: La. Const. Art. IV, § 1(a); Art. V, §§ 8, 10; Art. VI, § 22(e); Art. VIII, § 18 (1921).

Comment: The 1921 Constitution provides that the lieutenant governor shall be ex officio president of the Senate with authority to break tie votes. He is also named by the Constitution as a member of the State Highway Advisory Board, the Board of Liquidation of State Debt, the Board of Registration, and the State Pardon Board.

The proposed revision provides that the lieutenant governor shall serve ex oficio on every statutory committee, board, and commission on which the governor, and perform other executive functions as may be provided by the constitution or statute.

Section 7. Powers and Duties of the Secretary of State.

Section 7. There shall be a department of state headed by the secretary of state, who shall serve as the chief elections officer and administer the election laws; administer the laws relative to voting machines or other voting devices as now or may be hereafter provided by this constitution or as may be provided by statute; administer the state corporation and trademark laws; serve as keeper of the Great Seal of the State of Louisiana and attest therewith all official laws, documents, proclamations, and commissions; administer and preserve the official archives and records of the state; promulgate, publish, and retain the originals of all laws enacted by the legislature; countersign all commissions and keep an official registry of same; administer

oaths. He shall have such other powers and perform such other duties as may be authorized by this constitution or provided by statute.
Source: La. Const. Art. V, Sec. 21; Art. VI, § 22(e) (1921).

Comment: The 1921 Constitution provides that the secretary of state shall be a member of the State Highway Advisory Board. It also sets forth in various provisions a number of ministerial duties of the secretary relative to the publication of legislation, countersigning of commissions, receiving and recording of public notices, petitions, and election returns.

The proposed section is a new provision which creates a department of state, headed by the secretary of state. It sets forth the duties of the secretary which are similar to his present constitutional and statutory duties, except that the secretary is given constitutional authority to administer election laws, including the voting machine law. Since 1960 the custodian of voting machines, a statewide elected official, has administered the state's voting machine law. From 1940 to 1960, the law was administered by a board of voting machines and a custodian, who was the secretary of state. The secretary of state was a member of the board from 1940 to 1959.

Section 8. Powers and Duties of the Attorney General.

Section 8. There shall be a department of justice, headed by the attorney general who shall be the state's chief legal officer. As may be necessary for the assertion or protection of the rights and interests of the state, the attorney general shall have authority to:

(1) institute, and prosecute or intervene in any legal actions or other proceedings, civil or criminal;

(2) exercise supervision over the several district attorneys throughout the state; and

(3) for cause, supersede any attorney representing the state in any civil or criminal proceeding.

He shall have such other powers and perform such other duties as may be authorized by this constitution or provided by statute.
Source: La. Const. Art. III, § 31; Art. V, § 10; Art. VI, § 22(e); Art. VII, §§ 55, 56 (1921).

Comment: The 1921 Constitution creates the office of attorney general as a statewise elective official in the judicial branch. His powers and duties are established in various constitutional articles. Primarily, the attorney general is to institute, prosecute, and intervene in criminal or civil suits in which the state has an interest, and to supervise district attorneys. The official is also made a member of the State Highway Advisory Board, the Legislative Bureau, and the State Pardon Board.

The proposed section places the attorney general and the department of justice in the executive branch. The attorney general is made the state's "chief legal officer" and, in addition to the duties presently granted, he is given authority to supersede, for cause and when necessary for the interest of the state, any attorney representing the state in a civil or criminal proceeding.

The revision of this Section will serve to void the ruling in *Kemp v. Stanley*, 204 La. 110, 15 So. 2d 1 (1943) which limited the authority of the attorney general to intervene in legal matters in which the state has an interest.

Section 9. Powers and Duties of the Treasurer.

Section 9. There shall be a department of treasury headed by the state treasurer who shall be responsible for the custody, investment, and disbursement of the public funds of the state. He shall report annually to the governor and the legislature one month in advance of the regular session on the financial condition of the state, and shall have such other powers and perform such other duties as may be authorized by this constitution or provided by statute.

Source: Art. IV, § 1(a); Art. VI, § 22(e) (1921).

Comment: Fiscal duties of the treasurer are set forth in various articles and sections of the present constitution. The treasurer is a constitutional member of the State Highway Advisory Board and the Board of Liquidation of State Debt.

The proposed section creates a treasury department to be headed by a state treasurer. The treasurer is responsible for the "custody", investment, and disbursement of state funds. He is required to made an annual financial report to the governor and the legislature.

Section 10. First Assistants.

Section 10. Each statewide elected official, except the governor and lieutenant governor, shall each appoint a first assistant, subject to confirmation by the Senate, and may remove him at his pleasure. The official shall submit such appointment to the Senate in the same manner in which the governor submits appointments, and shall be subject to the same procedures and limitations in connection therewith as are imposed upon the governor. The first assistant shall possess the same qualifications as those required for election to that office.

Source: La. Const. Art. V, § 18; Art. VII, § 55 (1921).

Comment: The 1921 Constitution permits a number of statewide elected officials to appoint and remove assistants who, under certain conditions, have authority to perform acts and duties of the elected officer.

The proposed section requires Senate confirmation of the appointed assistants of the secretary of state, attorney general, and treasurer, with provision for their removal at the pleasure of the appointing officer. The first assistant is required to have the same qualifications as are required for those elected to the office.

Section 11. Vacancy in Office of Governor.

Section 11. The order of succession in the office of governor in the event of vacancy shall be (1) the elected lieutenant governor, (2) the elected secretary of state, (3) the elected attorney general, (4) the elected treasurer, (5) the presiding officer of the Senate, (6) the speaker of the House of Representatives, and then as may be provided by statute. Successors shall serve the remaining term for which the governor was elected.

Source: La. Const. Art. V, § 6 (1921).

Comment: The 1921 Constitution establishes the following order of succession in case of vacancy in the office of governor: lieutenant governor, president pro tempore of the Senate, secretary of state acting until a president pro tempore is elected.

In the proposed section the first priority in the event of a vacancy in the office of governor is given to statewide elected officials, followed by legislative officers and, thereafter, as the legislature may provide by law. Successors are to serve the unexpired term for which the governor was elected.

Section 12. Vacancy in Office of Lieutenant Governor.

Section 12. Whenever there is a vacancy in the office of the lieutenant governor, the governor shall nominate a lieutenant governor, who shall take office upon confirmation by a majority vote of the elected members of each house of the legislature.

Source: La. Const. Art. V, 9 (1921).

Comment: The 1921 Constitution provides that in the event of a vacancy in the office of the lieutenant governor, the president pro tempore of the Senate shall discharge the duties of the office.

The proposed section requires that a vacancy in the office of lieutenant governor be filled by an appointee of the governor confirmed by the legislature.

Section 13. Vacancies in Other Statewide Elective Offices.

Section 13. The order of succession in any other statewide elective office, in the event of a vacancy in such office, shall be the appointed first assistant in such office. Successors to such offices shall serve for the remainder of the term for which the official was elected.

Source: La. Const. Art. V, § 18; Art. VII, § 6 (1921).

Comment: The 1921 Constitution provides that the attorney general shall appoint a first assistant who, in case of a vacancy in the office of attorney general, shall perform the duties of the office until another attorney general has been elected and qualified.

The 1921 Constitution also provides that statewide elected officials, exclusive of the governor, lieutenant governor. commissioner of agriculture, and register of the state land office, are each authorized to appoint and remove an assistant who may perform duties of the office when the elected official is absent or unable to act.

The proposed section provides that appointed first assistants of elected officials, exclusive of the governor and lieutenant governor, shall succeed to the elective offices in the event of vacancies in these offices. As successor, the assistant will serve the unexpired term for which the official was elected.

Section 14. Other Vacancies.

Section 14. (A) Where no other provision therefor is made by this constitution, by statute, by local government charged, or by ordinance, the governor shall have the power to fill any vacancy

occurring in any elective office. If, at the time a vacancy occurs in such office, and the unexpired portion of the term of office is more than one year, the vacancy shall be filled at an election within six months, as may be provided by statute. The appointment provided twelve months from the date such application, petition, or proposed schedule is filed.

(2) If its decision is not rendered within six months from the filing date of any proposed rate schedule, it shall be deemed to be tentatively approved and, pending final approval, modification, or rejection may be put into effect subject to such protective bond or security requirements as may be provided by statute. If the commission disapproves the proposed schedule, in whole or in part, the carrier or utility may place or continue the schedule in effect under the bond or security, subject to any appeal and final action by a court of last resort, to cover any refund that may be finally directed. Refund claims therefor in the manner provided by statute shall be filed within one year after such final action.

(3) Any utility filing a proposed rate schedule shall, within twenty days, give notice thereof by publication in the official state journal and in the official journal of each parish within the geographical area in which the schedule would become applicable. Any person affected by the proposed rate schedule may intervene and may, should the commission not render its decision within twelve months, appeal as if such decision had been rendered.

Source: La. Const. Art. VI, §§ 5, 6 (1921).

Comment: The 1921 Constitution provides that orders of the Public Service Commission establishing common carrier or public utility rates shall go into effect when fixed by the commission and remain until set aside by the commission or the courts. Conditions for issuance of temporary restraining orders are given. Orders of the commission are enforced subject to constitutional penalties.

The proposal provides that rate schedules become tentatively approved, subject to statutory bond or security requirements, if the commission does not act within six months from the time the schedule is filed. If the commission fails to act within 12 months, persons affected by rate schedules may intervene and

file suit as if the decision had been rendered. If the commission disapproved the rate schedule, the rates may be placed in effect under bond or security pending judicial review. Refund suits may be filed only within one year after court action. There are no penalty provisions in the proposed revision.

(E) Appeals. Appeals from the orders of the Public Service Commission must be filed with the district court, at the domicile of the Public Service Commission, with a direct appeal to the supreme court, as a matter of right.

Source: La. Const. Art. VI, § 5 (1921).

Comment: The 1921 Constitution provides that appeals from orders and decrees of the Public Service Commission shall be filed with the Nineteenth Judicial District Court and thereafter directly with the Louisiana Supreme Court. Provisions in the present source relating to trial procedures, delays, and bond requirements when the commission appeals have been deleted from the proposed revision. Otherwise, no substantive changes have been made from the present constitutional provision.

COMMITTEE REPORT WITH RESPECT TO COMMITTEE PROPOSAL NO. 6 –

ARTICLE V. JUDICIARY DEPARTMENT

Section 1. Judicial Power

Section 1. The judicial power shall be vested in a supreme court, courts of appeal, district courts, and such other courts as this constitution may authorize.

Section 2. Needful Writs, Habeas Corpus, Orders and Process.

Section 2. A judge may issue a writ of habeas corpus and all other needful writs, orders and process in aid of the jurisdiction of his court. Exercise of this authority by a judge of the supreme court or court of appeal is subject to review by the whole court. The power of a court to punish for contempt shall be limited by law.

Section 3. Supreme Court; Membership; Terms.

Section 3. The supreme court shall be composed of a chief justice and six associate justices, four of whom must concur to render

judgment. The term of a judge of the supreme court shall be fourteen years.

Section 4. Supreme Court; Districts.

Section 4. The state shall be divided into at least six supreme court districts, with at least one judge elected from each. The present districts and the number of judges assigned to each are retained, subject to change by a two-thirds vote of the elected members of each house of the legislature.

Section 5. Supreme Court; Supervisory, Original, and Appellate Jurisdiction; Rule-Making Power; Assignment of Judges.

Section 5. (A) The supreme court has general supervisory jurisdiction over all other courts. It may promulgate procedural and administrative rules not in conflict with law. It may assign a sitting or retired judge to another court.

(B) The supreme court has exclusive original jurisdiction of disciplinary proceedings involving members of the bar.

(C) In civil cases, the supreme court's jurisdiction extends to both the law and the facts except as otherwise provided in this constitution. In criminal matters, its appellate jurisdiction extends to questions of law only.

(D) The following cases shall be appealable to the supreme court:

(1) A case in which a state law has been declared unconstitutional;

(2) A criminal case in which the penalty of death or imprisonment at hard labor may be imposed, or in which a fine exceeding five hundred dollars or imprisonment exceeding six months has been actually imposed.

(E) Subject to the provisions of Subsection (C), the supreme court has appellate jurisdiction over all other issues involved in any civil action properly before it.

Section 6. Supreme Court; the Chief Justice.

Section 6. (A) When a vacancy in the office of chief justice occurs, the judge oldest in point of service on the court, below the age of sixty-five years, shall succeed to the office.

(B) The chief justice shall be chief administrative officer of the judicial system of the state, subject to rules adopted by the court.

Section 7. Supreme court; Judicial Administrator, Clerk, and Staff.

Section 7. The supreme court shall have authority to select a judicial administrator, its clerks, and other personnel, and prescribe their duties.

Section 8. Courts of Appeal; Panels; Number Necessary to Decision; Term.

Section 8. The state shall be divided into at least four circuits, with one court of appeal in each circuit. Each court shall sit in panels of at least there judges selected according to rules adopted by the court. A majority of the judges sitting in a case must concur to ender judgment. The term of a court of appeal judge shall be twelve years.

Section 9. Courts of Appeal; Circuits and Districts.

Section 9. Each circuit shall be divided into at least three districts, with at least one judge elected from each. One or more judges may be elected at large from within the circuit. The present circuits and districts and the number of judges as elected in each circuit are retained, subject to change by a two-thirds vote of the elected members in each house of the legislature.

Section 10. Courts of Appeal; Appellate and Supervisory Jurisdiction.

Section 10. (A) Except in those cases appealable to the supreme court and as otherwise provided in this constitution, a court of appeal has appellate jurisdiction of all civil cases decided within its circuit. It has appellate jurisdiction of all matters appealed from the family and juvenile courts, except criminal prosecutions of other than juveniles. It has supervisory jurisdiction over all cases in which an appeal would lie to that court.

(B) Except where limited to questions of law by this constitution or, as provided by law in the case of review of administrative agency determination, its appellate jurisdiction extends to both the law and the facts.

Section 11. Courts of Appeal; Certifications to Supreme Court of Questions of Law; Determination.

Section 11. A court of appeal may certify to the supreme court any question of law before it, whereupon the supreme court may give its binding instruction, or consider and decide the case upon the whole record.

Section 12. Courts of Appeal; Chief Judge; Duties.

Section 12. When a vacancy in the office of chief judge of a court f appeal occurs, the judge oldest in point of service on the court below the age of sixty-five years, shall succeed to the office and shall administer the court, subject to rules adopted by the court.

Section 13. Courts of Appeal; Clerks and Staff.

Section 13. Each court of appeal shall have authority to select its clerk and other personnel and prescribe their duties.

Section 14. District Courts; Judicial Districts.

Section 14. The state shall be divided into judicial districts, each composed of one or more parishes and served by one or more district judges.

Section 15. District Courts; Judicial Districts; Changes; Terms.

Section 15. (A) The district courts, the civil and criminal district courts, and the judicial districts existing at the time of the adoption of this constitution are retained. The legislature, by a majority vote of the elected members of each house, with approval in a referendum in each district or parish affected, may establish or merge judicial districts or may merge a criminal and a civil district court in a parish, subject t the limitations of Section 23 of this Article.

(B) The term of a district judge shall be six years. Terms established for judgeships existing at the time of the adoption of this constitution are retained; however, the legislature by a majority vote of the elected members of each house, with approval in a referendum in the parish affected may reduce the term for district judges in a parish to not less than six years.

Section 16. District Courts; Original Jurisdiction.

Section 16. (A) Unless otherwise provided or authorized in this constitution, a district court shall have original jurisdiction in all civil and criminal matters. It shall have exclusive original jurisdiction of all felony cases involving the title to immovable property; the right to office or other public position; civil or political rights; probate and succession matters; the state; a political corporation, or a succession, as a party defendant, regardless of the amount in dispute; and the appointment of receivers or liquidators to corporations or partnerships.

(B) A civil district court shall have civil jurisdiction as provided for in Subsection (A) and a criminal district court shall have criminal jurisdiction as provided for in Subsection (A).

Section 17. District Courts; Chief Judge.

Section 17. Each district court may elect from its members a chief judge who shall exercise such administrative functions as prescribed by rule of court.

Section 18. Juvenile Courts; Jurisdiction.

Section 18. The jurisdiction of a juvenile court shall be as provided by law.

Section 19. Courts of Special and Limited Jurisdiction.

Section 19. Parish, city, municipal, traffic, family, and juvenile courts existing at the time of the adoption of this constitution are retained. The legislature, by a majority vote of the elected members of each house, and with approval in a referendum in each district, parish, or portion affected may establish, abolish, or merge trial courts of limited or specialized jurisdiction subject to the limitations in Sections 16 and 23 of this Article.

Section 20. Parish Courts.

Section 20. (A) Notwithstanding the provisions of Sections 15 and 19 to the contrary, the legislature may, by a majority vote of the elected members of each house, and with approval in a referendum in the parish affected, establish in that parish, a parish court. Other courts of limited or specialized jurisdiction in the parish may be simultaneously abolished.

(B) The jurisdiction of parish courts shall be uniform throughout the state and such courts shall be limited to the trial of misdemeanors,

and of civil matters not exceeding the value or sum of three thousand five hundred dollars, exclusive of interest and costs. A judge of said court shall be elected for a term of six years.

Section 21. Mayors' Courts; Justices of the Peace; Continued

Section 21. A mayor's court or justice of the peace existing at the time of the adoption of this constitution is continued subject to change by the legislature.

Section 22. Recording of Proceedings; All Courts.

Section 22. All proceedings in all courts in this state shall be recorded when requested.

Section 23. Judges; Term of Office or Compensation May Not Be Decreased.

Section 23. The term of office or compensation of a judge shall not be decreased during the term for which he is elected.

Section 24. Judges; Election; Vacancy in Office.

Section 24. (A) The election of judges shall be held at the regular congressional election.

(B) A newly-created judgeship or a vacancy in the office of any judge shall be filled by a special election which shall be called by the governor, and held within six months of the day the vacancy occurs or the judgeship is created, except when the vacancy occurs in the last six months of an existing term. Until the vacancy is filled, the supreme court shall appoint a person meeting the qualifications for judge to the office, to serve at its pleasure, who shall be ineligible to be a candidate for election to the judgeship.

(C) All judges serving on the date of adoption of this constitution shall continue in office for the term to which elected and shall serve through December thirty-first of the last year of their term or, if the last year of their term is not in the even-numbered year of a general judicial election, then through December thirty-first of the year next succeeding. The election for next term in the office will be hold in a general judicial election of the year the term expires, as provided above.

Section 25. Retirement of Judges.

from office, or retire involuntarily a judge for willful misconduct relating to his official duty, willful and persistent failure to perform his duty, persistent and public conduct prejudicial to the administration of justice that brings the judicial to the administration of justice that brings the judicial office into disrepute, or conduct while in office which would constitute a felony, or conviction of a felony. On recommendation of the Judiciary Commission, the supreme court may disqualify a judge from exercising any judicial function, without loss of salary, during the pendency of the proceedings in the supreme court. On recommendation of the Judiciary Commission, the supreme court may retire involuntarily a judge for disability that seriously interferes with the performance of his duties and that is, or is likely to become, of a permanent character. The supreme court shall make rules implementing this section and providing for confidentiality and privilege of proceedings.

Section 28. Department of Justice; Composition; Attorney General; Election and Assistants.

Section 28. There shall be a department of justice consisting of an attorney general, a first and second attorney general, and other necessary assistants and staff. The attorney general shall be elected for a term of four years at the state general election, and the assistants shall be appointed by the attorney general to serve at his pleasure.

Section 29. Attorney General; Qualifications; Powers and Duties; Vacancy.

Section 29. Attorney General; Qualifications; Powers and assistants shall have resided in this state and been admitted to the practice of law for at least five years preceding their selection. The attorney general shall attend to, and have charge of all legal matters in which the state has an interest, or to which the state is a party, with power and authority to institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal, as shall be necessary for the assertion or protection of the rights and interests of the state.

In case of a vacancy in the office of attorney general, the first assistant attorney general shall perform the duties of the attorney general until his successor is elected and qualified.

Section 30. District Attorney; Election; Qualifications; Assistants.

Section 30. In each judicial district a district attorney shall be elected by the qualified electors of the district for a term of six years. He shall have been admitted to the practice of law in the state for at least five years prior to his election and shall be resided in the district for the two years immediately preceding election. A district attorney may select his assistants and other personnel and prescribe their duties.

Section 31. Defense of Criminal Prosecution; Removal.

Section 31. No district attorney or assistant district attorney shall appear, plead or in any way defend, or assist in defending any criminal prosecution or charge. A violation shall be cause for removal.

Section 32. Sheriff; Duties; Tax Collector

Section 32. In each parish, a sheriff shall be elected for a term of four years. He shall be the chief law enforcement officer in the parish, except as otherwise provided by this constitution, and shall execute court orders and process. He shall be the collector of state and parish ad valorem taxes and such other taxes and licenses as provided by law.

Section 33. Clerks; Election; Powers and Duties; Deputies; Office Hours.

Section 33. (A) In each parish, a clerk of the district court shall be elected by the qualified electors of the parish for a term of four years. He shall be ex oficio notary public and parish recorder of conveyances, mortgages, and other acts and shall have such other duties and powers as may be prescribed by law. The clerk may appoint deputies with such duties and powers as may be prescribed by law and he may appoint, with the approval of the district judges, minute clerks with such duties and powers as may be prescribed by law.

(B) The legislature shall establish statewide uniform office hours for all clerks of district courts.

Section 34. Coroner; Election; Term; Qualifications; Duties.

Section 34. In each parish, a coroner shall be elected for a term of four years with such qualifications and duties as may be prescribed by law.

Section 35. Vacancies.

Section 35. Until filled by election as provided by law, when a vacancy occurs in the following offices, the duties of the office shall be assumed by: in the case of sheriff, the chief criminal deputy; district attorney, the first assistant; clerk of a district court, the chief deputy; coroner, the chief deputy. If there is no such person to assume the duties at the time of the vacancy, the governing authority or authorities of the parish or parishes concerned shall appoint a qualified person to assume the duties of the office until filled by election.

Section 36. Reduction of Salaries and Benefits Prohibited.

Section 36. The attorney general, a district attorney, a sheriff, or a clerk of the district court shall have neither his salary nor retirement benefits diminished during his term of office.

Section 37. Orleans Parish, Officials; Continued.

Section 37. Notwithstanding any provisions of Sections 32 and 33 of this Article to the contrary, the following officers in Orleans Parish are continued, subject to change by a majority vote of the elected members of each house of the legislature and by approval in a referendum in the parish: the clerks of the vil and criminal district courts, the civil and criminal sheriffs, the constables and the clerks of the first and second city courts, the register of conveyances, and the recorder of mortgages, all of which shall be elected for four-year terms with such duties and powers as provided by the legislature. Their terms of office, retirement benefits, or compensation shall not be reduced during their terms of office.

Section 38. Jurors; Qualifications; Selection.

Section 38. A citizen of the state who has reached majority is eligible to serve as a juror. The supreme court by rule shall provide for the selection of jurors.

Section 39. Grand Jury.

Section 39. There shall be a grand jury or grand juries in each parish whose duties and responsibilities shall be provided by law and whose qualifications shall be as provided in Section 38 of this Article. The secrecy of the proceedings, including the identity of the witnesses appearing, shall be provided for by law.

Records of the Louisiana Constitutional Convention of 1973: Convention Transcripts

Volume VI

27th Days Proceedings - August 8, 1973

Reading of the Section

Mr. Poynter "Section 8. There shall be a department of justice headed by the attorney general who shall be the state's chief legal officer. As may be necessary for the assertion or protection of the rights and interests of the state, the attorney general shall have authority to 1) Institute and prosecute or intervene in any legal action or other proceedings, civil or criminal, 2) Exercise supervision over the several district attorneys throughout the state, and 3) for cause, supercede any attorney representing the state in any civil or criminal proceeding. He shall have such other powers and perform such other duties as may be authorized by this constitution or provided by statute.

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, consistent with the position previously taken with regard to this section and as authorized by the Committee or the Executive Department, we are going to propose, at least I'm going to propose, in lieu of Section 8 a short provision, that I think the clerk has at this time, that in effect will leave out of the consideration of the office of attorney general at this time, and until we get to the Article on the Judiciary Department, the powers, functions and duties of the attorney general. But the proposed amendment will of course simply create the department of justice and designate the attorney general as chief legal officer of that department and authorize that this constitution elsewhere or the stature may provide other functions and duties for him. I don't know if there are any other amendments, but I did want to make it clear to the convention that this is the position that is going to be adopted with respect to Section 8 and the recommendation of the Committee on the Executive Department.

Amendment

Mr. Poynter First amendment sent up by Delegate Gravel. Amendment No. l, on page 7, delete lines 1 through 14, both inclusive in their

entirety and insert in lieu thereof the following: "Section 8. There shall be a department of justice, headed by the attorney general who shall be the state's chief legal officer," and Mr. Gravel has changed the amendment so as to delete that whole next sentence. The last sentence, the second sentence of the two, is deleted so simply the amendment would insert Section 8 and the first sentence contained in the language.

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, all that this does is to create the department of justice within the executive department and to constitutionally declare that the attorney general shall be the head of that department and the state's legal officer. All of the matters relating to the functions, powers and duties of the department and of the office attorney general will be relegated to future consideration when we consider the judiciary article. Mr. Chairman, I move the adoption of the amendment.

Questions

Mr. Tobias I'm reading Section 2 B of our draft as amended and as it reads now it says "the attorney general shall be state's chief legal officer, head the department of justice and shall have been admitted to the practice of law in this state for at least five years immediately preceding his election." In view of this, do you really think your amendment is necessary?

Mr. Gravel No, but I think... I think it's necessary but I do think we have caused a style and drafting problem that we'll have to consider later on.

Mr. Lanier Mr. Gravel, I don't believe your amendment does anything to that portion of this Section on page 6 and I believe we probably would have to change the title here because as it presently reads it says powers and duties of the attorney general.

Mr. Gravel I think that too would have to be changed by style and drafting. I agree.

Mr. Conroy Did you say the purpose of this was to provide that there would be a department of justice within the executive branch?

Mr. Gravel Yes sir.

Mr. Conroy But didn't we delete the attorney general from the executive branch in Section 1A when we finished amending that?

Mr. Gravel That's right. He was not included in 1A but subsequently there was a consideration by the convention of language in another section that I think does substantially put him in 1A. It was just read by Mr. Tobias and I don't think there is much question but as I've indicated we do have a style and drafting problem in relation to this office.

Mr. Dennery Mr. Gravel, I don't understand the purpose of your deleting the second sentence as it was originally proposed.

Mr. Gravel Sir?

Mr. Dennery Can you explain why you deleted the second sentence in the original amendment as you proposed it?

Mr. Gravel Yes. When we were in the Henry huddle a moment ago, some of the proponents of other amendments felt that there might be a broadening of the authority being granted to the legislature with respect to the powers, functions and duties of the attorney general that they did not want to permit by this language at this time.

Mr. Dennery Now wouldn't that be true of all of the other offices in the executive branch?

Mr. Gravel Mr. Dennery, I believe we are going to come to that issue with respect to other offices but this is one office that we know is going to be specifically and fully considered in another article that will be coming up in the very near future. But the point that you make, I think will be valid and should be considered in connection with the office of commissioner of agriculture, and commissioner of insurance and superintendent of education because they... well, except for superintendent of education, those other two will not be considered I don't think in any other article and I think we may very well have some discussion at that time about this practice problem.

Mr. Munson Camille, my question is more or less the same as Mr. Dennery's only in specifically refers to the commissioner of agriculture because in the amendment that the Committee on the Executive Department has, they do have that last sentence. Would you agree then that the Committee on Agriculture should come up with a

Section 25. (A) A judge shall not remain in office beyond his seventieth birthday, except as otherwise provided herein.

(B) A judge or judicial administrator in office or retired at the time of the adoption of this constitution, shall not have diminished any retirement benefits or judicial service rights, including the right to remain in office, as judge, during his present term, provided under the previous constitution or laws, nor shall the benefits to which his surviving spouse thereof was entitled be reduced.

(C) The legislature shall provide a retirement system for judges which shall apply to a judge taking office after the effective date of the statute enacting the system, and which a judge in office at the time of its adoption may elect to join.

(D) Until the legislature enacts the retirement system authorized in Subsection (C), a judge taking office after the adoption of this constitution and a judge in office who so elects within ninety days of the adoption of this constitution by notifying the secretary of state, shall be entitled to the following retirement benefits:

(1) This subsection applies to a judge of a court authorized by this constitution, except mayors and justices of the peace.

(2) A judge with sixteen years of judicial service may retire: a judge with twelve years of judicial service is eligible for retirement benefits at the age of sixty. On retirement, a judge shall receive annually as retirement benefits that portion of his annual average compensation for his three highest years which the number of years served bears to twenty-five, but not more than seventy-five percent.

(3) A judge who is physically or mentally incapacitated to perform his duties, as determined by the supreme court upon the advice of two physicians appointed by the court, shall be retired. He shall receive as annual retirement benefits two-thirds of his annual salary, or that portion of his average annual salary for the three highest years which the number of years served bears to twenty-five, whichever is greater.

(4) Upon the death of a judge, in office or retired, the surviving spouse, until remarriage, shall be entitled to one-third of his annual salary as judge prior to death or retirement or one-half the retirement benefits he was receiving or entitled to receive at the time of his death,

whichever is greater. If the judge is not survived by a spouse, or if the spouse dies, his unmarried children shall be entitled to the benefits provided in this subsection until the age of eighteen.

(5) Benefits provided herein shall be paid from the same sources as was his compensation as judge. The legislature and the political subdivisions shall provide for the payment of these benefits.

(6) To receive the benefits provided in this subsection the judge shall contribute a total of six percent of his salary to the paying authorities.

Section 26. Judges; Qualifications; Practice of Law Prohibited.

Section 26. A judge of the supreme court, court of appeal, district court, or parish court shall have been admitted to the practice of law for at least five years prior to his election, shall have been domiciled in the respective circuit, district, or parish for at least two years immediately preceding election, and shall not practice law.

Section 27. Judiciary Commission; Membership; Terms; Vacancy; Grounds for Removal; Powers.

Section 27. (A) The Judiciary Commission shall consist of one court of appeal judge and two district court judges selected by the supreme court; three attorneys admitted to the practice of law for at least ten years who are not judges, active or retired, nor public officials, selected by the Louisiana Conference of Court of Appeal Judges' Association or its successor; and three citizens, not lawyers, judges active or returned, nor public officials, appointed by the Louisiana District Judges' Association or its successor.

(B) A member of the commission shall serve a four-year term and shall not be eligible to succeed himself.

(C) A member's term shall terminate when he loses the status causing his appointment or when any event occurs which would have made him ineligible for appointment.

(D) When a vacancy occurs, a successor shall be appointed for a four-year term by the appointing authority for the position for which the vacancy occurred.

(E) On recommendation of the Judiciary Commission, the supreme court may censure, suspend with or without salary, remove

proposal as to the duties and functions of the commissioner of agriculture?

Mr. Gravel Well, we'll discuss that when we come to it. I don't think that the same deletion should be made with the respect to the commissioner of agriculture. Mr. Munson. I don't think that's before us.

Mr. Munson Why? It's a separate section, a separate committee. You have a Committee on the judiciary, you have a Committee on Agriculture.

Mr. Gravel What I'm saying is that the committee...well, that may be true. You're correct. I think that Natural Resources is giving consideration at that...

Mr. Munson It's Natural Resources and Agriculture.

Mr. Gravel You may be correct about that, yes sir. That's not before us now, though.

Mr. Guarisco Mr. Gravel, I don't know if Mr. Dennery asked the question. I understand that we did remove the attorney general from the executive branch in 1A as a constitutional office under the executive department. Isn't that correct?

Mr. Gravel I think we may have removed him, but we put him back at least by implication in the language that we read by Mr. Tobias.

Mr. Guarisco My question is, Mr. Gravel, if we're going to remove him from the executive branch as a constitutional office in 1A, and I assume that he's going to Judiciary. Is that right?

Mr. Gravel No sir. I think that most of us agree that the attorney general should be in the executive branch of government. In the previous discussion on that Mr. Guarisco, I believe the desire of this convention was to consider the functions of the attorney general's office under the judiciary article but generally with an understanding that probably those functions would then be placed back in the executive article where we will have created, if this amendment passes, the department of justice within the executive branch.

(Previous Question ordered. Amendment adopted, 93-12. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 107-4. Motion to reconsider tabled.)

Reading of the Section

Mr. Poynter "Section 9. Powers and Duties of the Treasurer. Section 9/ There shall be a department of treasury headed by the state treasurer who shall be responsible for the custody, investment, and disbursement of the public funds of the state. He shall report annually to the governor and the legislature one month in advance of the regular session on the financial condition of the state, and shall have such other powers and perform such other duties as may be authorized by this constitution or provided by statute."

Explanation

Mr. Stagg Mr. Chairman and fellow delegates, the Committee on the Executive Department has provided in this article that the state treasurer shall be the moneybags of the state. It has been recently shown in the press that considerable sums of money have been earned by the state from the wise investment of idle funds. The purpose of this article is to permit and encourage that this way of handling the state's money shall be continued. The requirement for an annual report to the governor on the financial condition of the state is a good one and we would hope that there would be a section f this article which would draw your approbation. If there was one it would be the one on the department of the treasury but I stand here to be corrected. Mr. Chairman, I move its adoption.

Questions

Mr. Triche I'm concerned about the last phrase of the section "provided by statutes". We give the treasurer certain duties spelled out in this section and then you provide he shall have other powers and duties that may be authorized by this constitution. I understand that to mean other duties provided in other sections and articles of the constitution and then you say "or provided by statute." We've seen this language in other sections that we've previously adopted and I just would like to hear the committee's explanation about by that language is adopted. It seems to me if you create a constitutional officer and you give him certain duties and you say he'll have other duties as provided by statute, that you're deferring to the legislature the unlimited authority to grant this officer unlimited authority.

Mr. Stagg Not inconsistent with his constitutional duties but additional duties could be added. Let me say it this way Pappy, when we started off with the powers of the governor we added an amendment on him, we've had the same language on the lieutenant governor, on

page 6, line 15, "be authorized by this constitution or provided by statute." We have the same thing in the secretary f state, in the original attorney general article we had the same language and we have the same language in the treasury. These were the original five statewise officials presented to this convention by this committee. It was felt that as this constitution ages, as situations in this this state change that we don't want to lack in flexibility for new circumstances and new conditions, that might cause the legislature in its wisdom to add functions to the officers that we had set out as being statewide elected officials and this kind of language we used quite faithfully in all of the statewide elected officers feeling that the legislature could if it saw fit give them additional duties beyond those prescribed in this constitution and gain flexibility thereby.

Mr. Shannon Mr. Stagg, who is the present treasurer?

Mr. Stagg Mrs. Parker.

Mr. Shannon Can Mrs. Parker, "he" shall report?

Mr. Stagg No sir. but you haven't read the style manual of the convention obviously, because it says where the masculine gender is used, the feminine gender can be interpreted.

Mr. Shannon Could we not use better language than that?

Mr. Stagg What do you want to say? He or she shall report, or it?

Mr. Shannon The treasurer shall report. Wouldn't that be better?

Mr. Flory Mr. Stagg, I call your attention to line 18, to the authority of the treasurer for the investment of public funds. My question to you is, in your committee's deliberations did you all take into consideration state employees' retirement fund, teacher retirement fund, these sort of funds and was it your intention that the treasurer invest these funds?

Mr. Stagg Mr. Flory, we deliberated upon that question for several hours. We called in additional expert witnesses to tell us about these funds, both from the teachers, from the state employee's retirement fund. We got a bundle of information about it and concluded that such funds were not in the treasury's domain nor were they public funds by definition and that therefore such retirement funds are not invested by the treasury.

Mr. Flory

Would your committee consider an amendment to specifically exempt those funds?

Mr. Stagg If such an amendment was presented on the floor of this convention, it would be up to the convention to vote it up or down. It was not our intention that retirement funds be invested by the treasurer, they are invested by the boards of those retirement funds.

Mr. Henry I think there is such an amendment in existence right now, Mr. Flory.

Ms. Zervigon Mr. Staff, the pronoun he recurs throughout this article. It wasn't the intention of the committee to limit statewide elected officials to men, was it?

Mr. Stagg No ma'am, and I'm waiting for the day you run.

Ms. Zervigon Well may I suggest that Style and Drafting might want to change that pronoun, he, that you had trouble with in the beginning of line 19 to say "the treasurer shall report."

Mr. Stagg I think that would be proper for the Style and Drafting division of this convention to do so.

(incomplete)

necessary to put the word "necessary" in there. It seems that might be a binding term on the, not only the Budget Committee, but the Appropriations Committee and the whole legislature as well.

Mr. Kilbourne Well, Mr. LeBlew, that just gives him... spells it out that he will have that authority. Of course, he is going to always have to clear these things, as far as his budget is concerned, with the legislature. I feel, and the Committee thought that it should be like that.

Amendment

Mr. Poynter Amendment No. 1 (by Mr. Lanier), on page 10, line 20, immediately after the word "first" and before the word "attorney" delete the words "and second" and insert in lieu thereof the word "assistant".

Explanation

Mr. Lanier Thank you, Mr. Chairman, fellow delegates, the purpose of this amendment is to delete reference to the second assistant

attorney general. By the previous discussion, you realize why we have already constitutionalized the first assistant, because he will succeed to the attorney generalship if that position is vacated by the attorney general. I see no necessity to constitutionalize the position of second assistant attorney general. The deletion of this language will do no violence to this provisions and, although I will concede this is the language in the present constitution, I think this was copied from the language in the present constitution from a style point of view. There is no necessity for us to constitutionalize the second assistant attorney general, anymore than it would be for us to constitutionalize the second assistant anything else. For that reason i offer this amendment. I will be glad to yield to any questions, Mr. Chairman.

Questions

Mr. Stinson Mr. Lanier, don't you think the reason is that if the first would succeed the attorney general, then automatically the second one would step in his place. Don't you think that is the reason it is outlined? I believe this is the way it is in the present constitution.

Mr. Lanier But I think he would then be the first assistant attorney general just like anyone else in any other chain of succession in any other position that we've created constitutionally, so I see no need to constitutionalize the second assistant.

Mr. Henry Does that complete your remarks? Justice Tate. Injustice Tate, I should say.

Mr. Tate Injustice Tate, just saying for the committee, I think this is in the nature of a technical amendment that I am reasonably sure that no one on the committee has any objection to. I think that was our intent.

(*Previous Question ordered. Amendment adopted: 110-8. Motion to reconsider tabled.*)

Amendment

Mr. Poynter Amendment no. 1 (by Mrs. Zervigon), on page 10, delete lines 17 through 24, both inclusive in their entirety.

Explanation

Mrs. Zervigon Mr. Chairman and delegates, the purpose of the amendment is to delete this section because I believe that, considering the language that we have already put in the executive department section, it's unnecessary. Section 8 in the executive department

section now reads, "There shall be a Department of Justice, headed by the attorney general who shall be the state's chief legal officer."

Section 13 of that article now reads, "Each statewide elected official, except the governor and lieutenant governor, shall appoint a first assistant, subject to confirmation by the Senate..." and so on. It seems to me that takes care of the mechanics that this section of the judiciary article is trying to take care of. I think the language is unnecessary. i can see no reason to repeat it in two places in the constitution and I urge your favorable consideration.

Questions

Mr. Bollinger Mrs. Zervigon, did not we delete the provision that the attorney general would be elective in the executive article?

Ms. Zervigon We deleted the attorney general's name in a list of statewide people belonging to the executive branch. However, when we came later on to outline the various departments within the executive branch, we left the Department of Justice in there.

Mr. Planchard Mary, in the executive department, did we take care of a four-year term for the attorney general?

Ms. Zervigon I believe that we said that all statewide elected officials have four-year terms, but I am not certain of that.

Mr. Stinson I don't believe we have adopted the executive. We may end up not having one, so don't you think we better leave it in this?

Ms. Zervigon No sir, I really don't because if we don't adopt the executive article, we don't have a governor either. i think without a governor our constitution hasn't much chance of acceptance by the people.

Mr. Stinson Well, don't you think the attorney general, Mr. Guste, would make a good governor?

Ms. Zervigon You didn't specify a year in that question, Mr. Stinson.

(*Previous Question ordered. Amendment rejected: 42-68. Motion to reconsider tabled.*)

Amendment

Mr. Poynter Amendment No. 1 (by Mr. Stagg and Mr. Dennery), on page 10, delete lines 17 through 24, in their entirely, and insert in lieu

thereof the following:... You had the intention, Mr. Stagg, of deleting the previous amendment with this. Is that correct, sir? I add appropriate language. "Section 26. Powers and Duties of the Attorney General. Section 26. There shall be a Department of Justice headed by the attorney general, who shall be the state's chief legal officer. As may be necessary for the assertion or protection of the rights and interests of the state, the attorney general shall have authority to: 1) institute and prosecute or intervene in any legal actions or other proceedings, civil or criminal, 2) exercise supervision over the several district attorneys throughout the state, and 3) for cause, supersede any attorney representing the state in any civil or criminal proceeding. He shall have such other powers and perform such other duties as may be authorized by this constitution or provided by statute."

Explanation

Mr. Stagg Mr. Chairman and fellow delegates, when the Committee on the Executive Branch was deliberating and trying to design an executive branch of government, it was the feeling of that committee, one, that the attorney general ought to be considered to be of the executive branch of government, since he was the state's chief legal officer. In the second instance, the committee, over a period of several hours, debated what ought to be the powers that would adhere to that office for him effectively to be able to be the state's chief legal officer to guard the rights of all of the people of the state, without having him so much authority that he might become more than just the state's chief legal officer. The purpose, the effect, the thrust of this amendment is simply to allow this convention, in the collective wisdom of the delegates to this convention, to have the opportunity to examine the two languages side by side' that proposed by the Committee on the Judiciary and that proposed by the Committee on the Executive Branch. There are strong feelings among the delegates to this convention as to what ought be the proper powers of an attorney general. Somewhat unfortunately, as in the case of other elected officials in the executive branch, personalities of the occupants of those offices at the moment have been intruded into the argument. I have tried completely to divorce the personality of the present incumbent from the duties that the constitution would give to an office of state government. I think that was what the Committee on the Executive Branch sought to do. There have been, in your memory and mine, several instances in

recent history, in isolated instances I will admit, where in a given, parish infractions of the law were not prosecuted by the district attorney for reasons felt by him to be sufficient unto themselves.

(*Quorum Call: 100 delegates present and a quorum.*)

Explanation continued

Mr. Stagg The root cause of the disagreement among delegates of this convention occurs in the Subparagraph 3. The languages reads, "for cause, the attorney general may supersede any attorney representing the state in any civil or criminal proceedings." We laid great stress by the words "for cause" and we debated the language contained in the case of Kemp against Stanley in which a district attorney was thought to be superseded by an attorney general for purely political reasons and not for cause./ It was the feeling of the members in the Executive Branch in the discussion that if a proper case brought forward to the Supreme Court, where sufficient actual cause did exist, that the case of Kemp against Stanley would not be the basis of an unfavorable ruling by the Supreme Court on the powers of the attorney general. For that reason, after strong debate, we inserted the words "for cause" so that an attorney general who was feeling his oats couldn't go storming around the state and causing disagreements among and between district attorneys who were lawfully exercising the duties of their office. That's the argument, that's the basis of the argument in this convention at the moment. The purpose of the amendment is to settle the argument. Mr. Chairman, I move the adoption of the amendment.

Point of Information

Mr. Kilbourne Mr. Chairman, I understood we were on Section 26 and what Mr. Stagg is really addressing his amendment to is Section 27.

Mr. Henry Well, of course, while you may be right insofar, and you are right insofar as what you say, he has apparently chosen to attach Section 26 in this manner and it will be up to the convention delegates to decide.

Questions

Mr. Pugh Tom, what gives me grave concern about this is the same language that say is the salvation, this "for cause" Your explanation suggests that the cause may be judicially determined. You also said that might ultimately be judicially determined by the Supreme Court.

The section, as devised by the original redactors, set forth a solution for that "cause" problem by order of a local court. With this amendment, would this not perhaps delay what might otherwise be rather serious civil and criminal proceedings, while we are trying to decide who is going to handle them?

Mr. Stagg Mr. Pugh, if you would read carefully the language contained in the Judiciary Committee's article, you will note that it states "that when a judge before whom a proceedings is being carried on." Now, for there to be proceedings before a court, a district attorney must have brought in a bill of information or a grand jury must have indicted, and the problem would arise, in my mind, when a district attorney did not bring in a bill of information and did not move for a grand jury indictment and there would be no proceedings before the judge on which the judge could then rule. That's the failure of the language in the judiciary article, as I see it. There is no proceedings until one has actually been brought into a court and then the court could say whether there would be proper intervention by the attorney general. That language is insufficient, in my opinion.

Mr. Pugh Well, it says, "for cause, superside any attorney representing the state in any civil or criminal proceedings." Does that not contemplate the existence of some proceeding at that point?

Mr. Stagg Yes, sir, but if you will read back in the Judiciary's first provision on where a district attorney can superside, if I had my yellow copy in front of me I would read it to you. Wait just a minute, Bob. At the top of page 11 under Article... Subparagraph 3, "For cause, when authorized by the court of original jurisdiction in which any proceeding is pending." A failure to act by a district attorney would prevent there to be any judicial proceeding and a court to act, and that's why we thought that for cause... from the very beginning if a district attorney, for some reasons, failed to act, there would be no proceeding as envisioned in Article Subparagraph 3, in line 3 on page 11.

Mr. Pugh Well as I read your proposed amendment, it contemplates the existence of a civil or criminal proceeding. That's what it days.

Mr. Stagg That's right.

Mr. Pugh Therefore, you've already got a proceeding under your amendment, to get to that point.

Mr. Stagg That's correct.

Mr. Pugh However, your illustration is where a district attorney fails to act. If he fails to act, then there wouldn't be any proceeding, would there?

Mr. Stagg But Bob, in paragraph 1 of my amendment it says that the "District attorney can institute, prosecute or intervene in any legal action or other proceeding," so his intervention could bring that proceeding into court and, having brought it into court, if the district attorney wouldn't act then he could superside him in that action.

Mr. PughWell then, under your thesis insofar as this amendment is concerned, you would contemplate the attorney general going into a parish and instituting some proceedings before it's judicially determined that he ought to be there? That this cause has been determined?

Mr. Stagg That's correct, Bob.

Mr. Fayard Mr. Stagg, the way, and correct me if I'm wrong, the way I read your proposed amendment, is it not true that under Paragraph 1, the attorney general could institute and prosecute any legal action, including a criminal action? He would have direct authority to do this under your amendment, would he not?

Mr. Stagg Yes, he would.

Mr. Fayard He would have the authority, under your (incomplete)

Point of Information

Mr. Burns Is the vote on the entire executive article? I mean the vote that's coming up.

Mr. Henry No sir. The vote that's coming up is on the section that has been added today, s to whether or not it will be finally adopted.

(*Previous Question ordered on the Section. Section passed: 79-39. Motion to reconsider tabled. Previous Question ordered on the Proposal: 90-26. Proposal passed: 82-38. Motion to revert to Unfinished Business adopted without objection.*)

PROPOSAL ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal no. 21, introduced by Delegate Dennis, Chairman, on behalf of the Committee on the Judiciary, and Delegates Avant, Bel, Bergeron and other members of that committee.

The proposal is a substitute for Committee Proposal No. 6.

A proposal making provisions for the judiciary branch of government and necessary provisions with respect thereto.

The status of the proposal is that the Convention has adopted, as amended, Sections 1 through 26 of the proposal, save for Section 18, which was passed over, dealing with juvenile courts, and Section 20 dealing with preservation of evidence, which failed to pass. We have now under consideration Section 27.

(*Motion to waive reading of the Section adopted without objection.*)

Explanation

Mr. Kilbourne Mr. Chairman, fellow delegates, I believe we omitted the reading of this section 27 which we are on now. Committee Proposal No. 21. Perhaps I had better read it.

"Section 27. Attorney General; Powers and Duties; Vacancies

Section 27 (A). The attorney general shall be the state's chief legal officer as may be necessary for the assertion or protection of the rights and interests of the state. The attorney general shall have the authority to: 1) institute and prosecute or intervene in any civil action or proceeding. 2) advise and assist, upon request of the district attorney, in the prosecution of a criminal case and, 3) for cause, when authorized by the court of original jurisdiction in which any proceeding is pending, subject to judicial review, supersede any attorney representing the state in any civil or criminal action. He shall have such other powers and perform such other duties as may be authorized by this constitution or provided by statute."

Gentlemen, the Judicial Committee has attempted in this particular provision to clarify the powers of the attorney general, particularly with reference to the office of the district attorney. You heard General Guste and you heard the representative of the district attorneys here yesterday, which I agree might have been somewhat confusing, because this is actually the section they were talking about. The present provision of the constitution on this subject is Article VII, Section 56. This reads, "The attorney general and the assistant shall be learned in law and shall have actually resided and practiced law as duly licensed attorneys in the state for at least five years preceding

their election and appointment. They, or one of the, shall attend to and have charge of all legal matters in which the state has an interest or to which the state is a party, with power and authority to institute or prosecute or to intervene in any and all suits or other proceedings, civil or criminal, a they may deem necessary for the assertion or protection of the rights and interests of the state. They shall exercise supervision over the several district attorneys throughout the state and perform all other duties imposed by law."

Now ladies and gentlemen, in the past there has been a great deal of trouble with that section of the constitution, as to just what the powers of the attorney general are. Our committee has tried to clarify this problem, and if this Convention can come up with something better to clarify it, then that would certainly be fine. In order to acquaint you with the problems that have occurred in the past, I think it is going to be necessary for me to relate a little past history which involves this particular section of the constitution, and particularly in regard to the decision of the Supreme Court in the case of *Kemp vs. Stanley*. The difficulty encountered with this section, in the instance of the case I am referring to, began back in 1934 when the legislature, by Act 24 of the first extra session of 1934, put this provision in the law. I will just read the part that's pertinent, "provided further, that the attorney general shall have power to relieve, supplant and supersede the district attorney in any criminal proceeding, when he may deem it necessary for the protection of the rights and interests of the state, with full power to institute and prosecute criminal proceedings, and the discretion of the attorney general under this article shall not be questioned or inquired into by any court." Now that was a 1934 act. At that time Eugene Stanley was district attorney of Orleans Parish. In 1935, he undertook to prosecute a man named Major for carrying concealed weapons. Mr. Major claimed to be a state inspector and entitled to carry firearms. The then attorney general, who was Mr. Porterie, thought that the gentleman did have the right to carry firearms and that Mr. Stanley should not be allowed to prosecute him, and so he wrote the district attorney a letter and told him he was removing him from the case, superseding him. Mr. Stanley took the matter to the Supreme Court, and in that case he alleged that this particular law was unconstitutional because it far exceeded the powers given the attorney general by Section 56 of the Constitution of 1921.

But the Supreme Court ruled that the law was constitutional. That was the status of the situation in 1940, I believe it was, when Mr. Stanley became the attorney general. So, thereupon, Mr. Stanley, using this section that he had previously claimed was unconstitutional, undertook to supersede district attorneys all over the state of Louisiana, and in some instances it was almost an institution of a reign of terror. Up in Repides Parish, the district attorney was superseded by the attorney general's office who took over the grand jury and returned some two hundred and forty-six or seven indictments against various state officials, including a number of indictments against the major of the city of Alexandria. In that circumstance, the attorney general's office had actually completely superseded the district attorney and was advising the grand jury. Now these matters were pointed out by the Supreme Court in the later case of *Kemp vs Stanley*, but it developed that none of these charges against these officials were actually prosecuted. They were purely political. After Mayor Lamkin was defeated in the ensuring election, Mr. Stanley dropped all the charges against him. In fact, none of the people who were indicted in that parish were ever even arraigned. Over in Sabine Parish, the attorney general himself superseded the district attorney and filed a bill of information against the Sheriff of Sabine parish, charging him with public bribery, with having accepted a bribe from two bootleggers. The case was not brought to trial, but the sheriff insisted on being tried, and he was acquitted, in very short order. The grand jury then indicted the two bootleggers for perjury on the testimony that they gave in the case against the sheriff. An assistant attorney general appeared in court to defend these two bootleggers who had been charged with perjury and succeeding in having all.., filed motion to quash and had all the charges against them thrown out of court.

Mr. Henry Mr. Kilbourne, you've exceeded your speaking time, sir.

Mr. Kilbourne I'm sorry. I wanted to go into this but I see I'm not going to have time, gentlemen, but I thought it was important. I thought I had a little more time than I did.

Questions

Mr. Chatelain If a district attorney in my parish needs help, he has to ask the attorney general to come in our parish to assist him in any problem he may have there. Is that correct, sir?

Mr. Kilbourne He has that power, he would have that power under the proposed article that we have here.

Mr. Chatelain All right, the. In line 5, you say that "supersede any attorney representing the state in civil or criminal action." Would you dwell on that a little bit, please? I'm not quite clear on that.

Mr. Kilbourne he has that power, he would have that power under the proposed article that we have here.

Mr. Chatelain All right, then. In line 5, you say that supersede any attorney representing the state in civil or criminal action." Would you dwell on that a little bit, please? I"m not quite clear on that.

Mr. Kilbourne You mean under the proposed section that we have here?

Mr. Chatelain Yes, sir.

Mr. Kilbourne "For cause, when authorized by a court of original jurisdiction." In other words, this provision was put in there in an attempt to take care of a situation which possibly might arise where a district attorney absolutely would not perform his duty in a particular case. In such instance, the attorney general would then have the power to come in and apply to the court where this question was pending and, with leave of the court, he could supersede the district attorney. He could take over this matter, and in such instance, of course, either side would have the right to ask for a review by the Supreme Court of Louisiana.

Mr. Chatelain Well, as it is now, the attorney general can go into a parish and take over without any authority from anyone. Is that correct?

Mr. Kilbourne Well, that is one of the questions that is not settled, Mr. Chatelain. If my time had not run out, It was going to try to explain to the delegates why that question has never been settled. It has not been settled by the Supreme Court and the vagueness of the language of the present constitution. It do not know how that would turn out if the attorney general attempted to go in and just take over from a district attorney. It says in the present article that he can intervene and possibly, if he intervened, why the district attorney would more or less have to defer to him. I am not clear on the language. I have studied it a lot, and I don't think any one (anyone) knows what it means.

Mr. Chatelain Thank you.

Mr. Burns Mr. Kilbourne, didn't the Supreme Court hold in the Kemp case that the attorney general could not go into a district without it showed legal cause?

Mr. Kilbourne Mr. Burns, I studied the case quite carefully. The Supreme Court, and I didn't get to this in my explanation, but the Supreme Court in Kemp vs Stanley only held one thing, and that was that Act 34 of the Special Session of 1934 was unconstitutional, and that is actually all they held.

Amendment

Mr. Poynter Amendment no. 1 (by Mr. Gauthier et al.), on page 11, delete lines 3 through 6, both inclusive, in their entirety.

Explanation

Mr. Gauthier Mr. Chairman, members of the delegation, it's no secret that there's been a lot of controversy evolving about whether or not the attorney general should have the power to supersede the local district attorney. I want to begin by telling you that this is nothing personal. I supported our present attorney general. I think he is doing a fine job. However, I have to ask myself this question, and I wish you would ask yourself this question. Is there a super assessor, is there a super sheriff and is there a super clerk of court that can come into the local perish or judicial district and supersede that local governing body, and I say to you there is not. Now there has been some confusion about Section 56 of the 1921 Constitutional Convention, which says or implies, that the attorney general can, in certain cases, supersede the local district attorney. In 1934, the legislature enacted an act saying that he could. In *Kemp vs Stanley*, the Supreme Court said that the attorney general did not have this power, that constitutional act was unconstitutional, or the legislative act was unconstitutional. Justice Fournet,,, in concurring with that opinion, put it in this word to Lord (....) axion which says, "Power corrupts, and absolute power corrupts absolutely." I suggest to you that the court did not want to provide for a situation where the attorney general could intercede over the local district attorney, or supersede. Now, what does this amendment do? I'll tell you exactly what it does. It deletes (3) entirely and it gives the attorney general the present powers he has. Mr. Lanter did a beautiful question, and, Mr. Chatelain, I think this will answer your question. Mr. Lanier, when questioning Attorney General Guste

yesterday, established by Attorney Guste's own admission, that with the deletion of (3) he would have the present powers he possesses, the present powers, if you delete (3). So if we delete (3), we are not taking away anything from the attorney general nor are we giving him anything. I suggest to you, instead, we are saying explicitly what we mean, which the people in 1921, the redactors of that constitution didn't do, and that's why we are in this present shape. Now (3) says "for cause", and it has been asked what is cause, and who is going to determine it, the legislature or the judiciary? I suggest to you, let's remove the future problem mpw and de;ete (3) and simply give the attorney general the present powers he now has. If I may get your attention for a minute, I would like to tell you a little joke that this reminds me. of.

We had a young man that was in the seminary, and he was a real radical, always making changes. People became afraid that he may lose some parishioners, so they sent him up north where the district wasn't populated with a lot of Catholics. In no time at all, the attendance tripled; the cash flow tripled. The Bishop was delighted, and he sent down a young man to inspect it, to see what was going on, another priest. So the priest talked with the young Father and he said, "Father, I'm going to go back and talk with the Bishop and find out if all of these things are all right." So he went back and he checked with the Bishop, and he came back and he talked with the young Father, and he said, "Father, the Bishop said the bucket seats are fine; the psychedelic choir is fine; the gold spittoons are fine and the drive-in confession is all right, but Father that big neon sign out in the from saying, 'Toot and Tell or go to Hell' has got to go."

I say to the attorney general, "You can stay, but Section (3) has got to go." It is going to cause a problem. It has caused a problem in the past. Let's alleviate that problem right now. Let's not make the same mistake the redactors of the 1921 Constitution made and then have to have the Supreme Court come in and decide what we meant. Let's spell out what we meant, and what we mean its that we do not want th attorney general to supersede over the local district attorney.

Vice Chairman Casey in the Chair
Questions

Mr. Lanier Mr. Gauthier, is it correct in your address that you indicated that there was no super assessor in the state of Louisiana?

Mr. Gauthier That's correct.

Mr. Lanier Does not the governing authority of each parish sit as a board of review of the assessments in that parish?

Mr. Gauthier A board of review, right.

Mr. Lanier And does not the Louisiana Tax Commission have authority over these matters, also?

Mr. Gauthier Right, and it spells out "for cause."

Mr. Lanier Right. And were you aware that I favor the committee proposal as written?

Mr. Gauthier No, I was not, Mr. Lanier. I was well aware of the fact that your line of questioning established that if we delete No. 3, the attorney general would have the present powers that he has. No more and no less.

Mr. Giarrusso Mr. Gauthier, under... if we approve your amendment, would a citizen have legal recourse available to him if he is being harassed by a local district attorney?

Mr. Lanier (Mr. Gauthier) Yes, Joe. Joe, I answer it in this way, in the same way he would against the sheriff, an assessor, or a clerk. He could file malfeasance charges or you have recall and impeachment.

Mr. Giarrusso And who would review the malfeasance charges?

Mr. Lanier (Mr. Gauthier) By the court.

Mr. Giarrusso Would they not have to be submitted to the district attorney?

Mr. Lanier (Mr. Gauthier) You are correct there, but it would come in... also, the attorney general could file the malfessance charge.

Mr. Giarrusso But my question is that, you know, would a citizen have available to him some legal mechanism wherein he could apply for what he feels are his rights?

Mr. Lanier (Mr. Gauthier) Recall or impeachment.

Mr. Giarrusso

I'd say that's rather difficult, wouldn't you?

Mr. Lanier (Mr. Gauthier)

I disagree with you. I think he has all the rights in the world if he's afraid of the attorney... the district attorney abusing his power. I see no problem.

Mr. Giarrusso

Well, is it not conceivable that a district attorney could call you or anyone else before a grand jury on a weekly basis and then I ask you, what would be your recourse?

Mr. Lanier (Mr. Gauthier)

Let me ask you this, Joe, how do you see that number 3, "for cause when authorized by the court of original jurisdiction," would give that citizen any more rights? I don't understand your question in connection with my amendment which would delte three.

Mr. Giarrusso Well, I don't pretend to really understand it too well myself, but when you talk about the original court of jurisdiction, are you in reference only to charge? Is this the only way that a district attorney can intimate or harass you, is the fact that you have been officially charged? Does he not have other legal means available to him to do it?

Mr. Lanier (Mr. Gauthier) I still don't follow you, Joe.

Mr. Giarrusso Well, it's real simple. He's the legal advisor to the grand jury, isn't he?

Mr. Lanier (Mr. Gauthier) That's right. And presently the attorney general has the right to sit in with the district attorney on the grand jury. A right that was just given to him in 1972, a right that he did not have before.

Mr. Giarrusso That's true. The only thing I'm saying is that it's very difficult if the district attorney, the judge... we're just being practical about it, is that if they are together, it is very difficult for a little guy to have available to him some legal relief if he so seeks.

Mr. Lanier (Mr. Gauthier) Right. Joe, I could agree with you on that. You have no argument there. But I suggest to you that three doesn't

alleviate this. By number 3, we are causing a problem that was caused in 1940 in the Kemp cases and before there were a lot of Bills of Indictments issued, in fact against a hundred and fifty public officials where the attorney general superseded, for political reasons and issued indictments. Most of those cases were nol-prossed, some of them were never brought to trial, and those that were brought to trial, were brought to trial at the insistence of the defendant.

Now, I suggest to you that number 3 will accomplish this. If you have an attorney general that is so desirous to do so and oppose a certain attorney, district attorneys in a section, six to seven, eight weeks before an election he can file petitions to supersede in several criminal matters in that court. And then the judge is put in a situation where no matter which way he rules, it can be used against that district attorney.

Mr. Giarrusso I'll end it on this. I don't quibble about what you are saying, as that I am against too much power for anyone. That goes for the attorney general or anyone else. What I'm trying to seek is some type of balance, not for the attorney general, but for the relief of the citizens that live in that particular parish or community. That's what I'm addressing myself to.

Mr. Lanier (Mr. Gauthier) I agree with you a hundred percent, Joe, and if we take just one and two and delete three, that's exactly what we have, the power you just spoke of. Enough and not too much.

Mr. Casey Gentlemen, I'd ask those asking questions to confine their questions in question form rather than carrying on a private conversation with the gentleman at the podium.

Mr. Singletary Mr. Gauthier, have you ever had corruption in your parish where the district attorney refused to do anything?

Mr. Gauthier No. Alvin. We are well pleased with our district attorney in our parish. We have no problems there, and we would not like to see the attorney general be given the right to supersede. I see no need for it and I say to you that if you put in there "for cause," you are establishing a problem that we now have with interpretation of the article. If we are going to write something, let's be explicit, let's say what we mean and get it over with. That's what's wrong with Section

26 of the 1921 Constitution. They did not spell it out. Consequently, you have the problem we presently have.

Mr. Vick Mr. Gauthier, you contended that the attorney general said yesterday that if you deleted three, he would have all the powers he has presently , is that correct?

Mr. Gauthier That's correct.

Mrs. Vick All right, Mr. Gauthier, I call you attention to lines 31 and 32 on page 10, and I call your attention to the emission of "criminal" where it says, "institute, prosecute, or intervene in any civil action or proceeding," as you know, I think, in Article VII, Section 56, it says, "criminal and civil", does it not?

Mr. Gauthier. Right. Mr. Vick, so right you are, and the Supreme Court later declared that that was not what the redactors of 1921 meant, that they meant for the attorney general to have supervisory powers and not the ability to supersede over the local district attorney.

Mr. Vick. What case was that?

Mr. Gauthier. Kemp vs. Stanley.

Mr. Vick. I suggest that you reread that case, Mr. Gauthier.

Mr. Gauthier. Mr. Vick, I have it right in front of me and if you'd like I'll read you part of the concurring opinion.

Mr. Vick. No, no. My question to you is, does or does not Article VII, Section 56 of the present constitution have "criminal" in it, as well as "civil"?

Mr. Gauthier. I say, "sure it does," and I say further that that's what led to the problem we presently have, until they spell it out.

Mr. Pugh. Sir, are you aware of the fact that at least the section as this committee has drawn it locks in this specific power. That if this Subsection 3 is deleted, then the legislature has the right to provide anything they want to relative to that power.

Mr. Gauthier. That's correct. I realize that, Mr. Pugh.

Mr. Kilbourne. Mr. Gauthier, you are aware that, as I understand it from the document I received yesterday, that the District Attorneys Association favors the committee proposal?

Mr. Gauthier. I think there's been a lot of confusion over what they favor, Mr. Kilbourne. I saw an amendment going around, it possibly could be a joke. But it had "for cause, the president of the district attorney's association can intercede over the attorney general." It was naturally done in humor, but it made me stop and think.

Further Discussion

Mr. Avant. Mr. Chairman and fellow delegates. I'm not as adept as my friend, Mr. Willis, in citing authority for the things that I quote, but at one time somebody said that "fools step in where angels fear to tread," and that may well apply to me now. But I have to say what's on my mind.

I oppose this amendment. This was a matter that was given great consideration by the Judiciary Committee, this particular provision that you have before you.

Now what I have to say is not said as a criticism of any attorney general past or present, or any district attorney past or present, but it's said in defense or in behalf of a principle. Now there are those who feel that the locally elected district attorney should remain forever, and in all cases, inviolate from any disturbance or interference of supervision by the attorney general who sits in Baton Rouge.

There are those on the other hand, who feel and espouse the view that the attorney general as the chief legal officer of the state, head of the department of justice, should have absolute power as he sees fit to supersede or interfere with or assist the locally elected district attorney.

I submit to you that neither one of those propositions in sound, and I submit to you that this provision, while it may in the rinds of some people be called a compromise, is not a compromise in my mind because it is the right way to go. We have operated in this state for years and years and years upon the premise that responsibility for law enforcement, prosecution, is basically left up to local authorities. We have locally elected sheriffs, locally elected district attorneys, locally elected judges and we do not operate on the system that the federal government operates on, when all of these decisions are made in Washington and the local United States attorney is subject to the whims and commands of the department of justice. Yet we must recognize that there are bound to be times when situations arise, and I'm not saying that any have ever arisen in the past, but they will arise

where a district attorney may not be discharging his duties and we are faced with the problem of what are you going to do in that situation.

I submit to you respectfully, that what this Judiciary Committee has proposed is the real answer to the problem and I simply ask you to look at this provision and read it and see what it says and then make up your own mind. But if you will look at those three subparagraphs, one, two and three, which gives the attorney general authority to do certain things, you will see that they are limited first by the language that precedes it, "as may be necessary for the assertion or protection of the rights and interests of the state," the attorney shall have authority to do these things...not just any time he wants to, not just because he decides that's the thing to do, but it must "be necessary for the assertion or protection of the rights and interests of the state.

"Now, then, what are the things that he can do? He can institute and prosecute or intervene in any civil suit. He can advise and assist the district attorney when the district attorney requests him to do so, but then we come to the final and the most important provision. He can "for cause and when authorized by the court of original jurisdiction in which any proceeding is pending and subject to judicial review," supersede a district attorney. I ask you to vote this amendment down and any other amendments and vote for the committee report.

Further Discussion

Mr. Arnette. For starters, I'd like to get the record straight. I don't know how many of you have read *Kemp vs. Stanley*. But *Kemp vs. Stanley* merely held that the attorney general could not supersede a district attorney on his own opinion, when he thought necessary. He did not make any decision about superseding him for cause. It made no decision whatsoever about that.

The second thing is, this amendment would prevent the attorney general from superseding a district attorney if the district attorney was not doing his job. I think if a district attorney is not doing his job, someone ought to step in, someone ought to take care of the people of that district. If there is organized crime in the area, if there is crime that is not being prosecuted, someone ought to step in and have the power to prosecute it. That is all this would allow if the district attorney was not doing his job.

There are safeguards to this. There is judicial review. If the district court holds against the district attorney, he can appeal it to the appellate court and then you have writs to the Supreme Court. There are writs that you can go to the Supreme Court and have them decide whether it's right for the attorney general to supersede a district attorney. There are definite safeguards in this.

But this, let me point out to you and I want to make it very clear, this provision only allows supersession if it's necessary, if the district attorney is laying down on the job, or is doing a bad job. I think we need to wake up and realize one more thing. That it's time for the federal government to quit coming in and cleaning up our state for us. It's time for this state to start cleaning itself up and this would be one step that would allow such a thing.

If you adopt this amendment you could have a district attorney in a judicial district refuse to prosecute crime in that particular district and no one could say anything about it and those criminals would never get prosecuted. And I think this is a bad situation. And you are going to have the federal government coming in and prosecuting those people under some federal law, and I don't think is the way it ought to be. If they are committing a crime, let the state handle it's own problems. People have talked a lot about home rule. I think it's time that the state started taking care of its own house. And this is one way to do it.

Let's defeat this amendment.

Further Discussion

Mr. Jack. Mr. Chairman, ladies and gentlemen, I rise to oppose this amendment. In this, I don't think some of the arguments are pertinent. Here you have the protection of the court. It has to be shown cause when authorized by the court, he can come in there and supersede.

Sometimes you find this necessity. You hope it don't. Now I have an amendment that is added on that take care of situations where if the district attorney didn't bring any suit but where with authorization of the court, you could...the attorney general could come in and perform a necessary duty. Now most all public officials are good, but we all know that at times, corruption does occur. And if we had by some chance a lot of corruption and we didn't have the law that would allow the attorney general to supersede a district attorney in a pending

case, my amendment that's coming afterwards to file and prosecute cases and intervene, then what would you have? You would just suffer the consequences of the district attorney who had turned out bad. That's the safety valve that you have. Now, this talk about the Louisiana scandals back in the late thirties and the prosecutions that were filed and it wasn't completed, it looked like the state was coming apart at the hinges at that time. In times of crisis lot of things are done that may be wrong. And that's all the more reason when we are sitting here in a calm atmosphere without any crisis, to figure out what's best to do. There's no crisis here at all. We are just simply here discussing these things in the cool atmosphere. And I say that you ought to defeat this amendment and adopt that Subparagraph No. 3.

Further Discussion.

Mr. Burson. Mr. Acting Chairman and fellow delegates, you will recall yesterday that I took a very strong position in favor of local law enforcement and stressed the point that the processes of criminal law should be kept close to the people in order to avoid a centralized administration of justice that is subject to tyranny. However, in my view, the committee proposal is entirely consonant with the views that I expressed yesterday. And I am up here to speak against the amendment and in favor of the committee proposal. I think the committee proposal is thoughtfully drafted, and I think it meets the fears of those who worry in situations where local law enforcement officials might, for some reason or another, not be in a position to prosecute as they should to protect the individual citizens in their area, and it gives those individual citizens an ultimate authority to which they can appeal for help.

I draw your attention to the fact that Section 3 provides for judicial review beginning in the court of original jurisdiction, which is the local court involved. And it also provides for further review by either the district attorney or the attorney general in case a decision of the local is unsatisfactory to either party. And I think that a judicial remedy in matters where rights of the private citizen in criminal prosecution are involved is appropriate. I cannot speak for all of the district attorneys in the state by any manner of means. I can say that I have been authorized to speak for the man for whom I work, the District Attorney of the Twenty-Seventh Judicial District, St. Landry Parish, who is in favor of the committee proposal. I can also state that

I have received correspondence from the District Attorney of the Fifteenth Judicial District which is Acadia, Lafayette and Vermilion Parish, and he also is in favor of the committee proposal.

I asked intentionally yesterday a question of Mr. Ware when he was testifying what the official position of the association was and as I recall his answer, it was that the association of district attorneys in this state were in favor of the committee proposal.

I submit to you that these men are in favor of the committee proposal for the very good reason that they know that they will do their job and they have no reason to fear anyone seeking this type of remedy against them in the court from the attorney general's office. And they are all well aware that the ultimate court to which they have to answer is the court of public opinion in the elections held every six years for this office. And as you will recall, that court of public opinion has seen fit in the most recent election to make a number of changes in the most important office of district attorney.

I urge you to reject this amendment. There will be one future amendment that I think deserves consideration. I think Mr. Toomy will offer an amendment which will make it clear that the statutory powers which may be given the attorney general must be consistent with and consonant with the provisions of the constitution. I would urge you to support that amendment when it comes up and I am doing so now in order to avoid having to speak again on this subject.

Thank you.

Further Discussion

Mr. Stovall. Mr. Chairman, ladies and gentlemen of the convention, I hesitate to speak on this particular subject because it is not in an area in which I feel especially qualified. And yet the issue here seems to be very simple and I think I might express it this way.

We believe in a system of checks and balances. We believe in a separation of powers. We believe that we must prevent power and authority from being given to anyone or any person or any group where it cannot be challenged. Now it seems to me that if you go along with this amendment, you are saying that the district attorneys have power where there is no check or no balance or no question can be raised. It seems to me that we are getting away from one of the basic things of our understanding of what our government should be, that namely, all

power should have some check or some balance. And, therefore I encourage you to reject this amendment.

Another point for our consideration is that we believe in the role and the rule of law. Now if we adopt this amendment, we are saying that laws can go without being obeyed in different districts and the district attorney or the attorney general or no one else can step in and call a district attorney to accountability. And it seems to me that you who are attorneys, who believe in the law, should certainly be opposed to this particular amendment.

And let me remind you again of what Mr. Jack Burson said just a moment ago, that the district attorneys, Mr. Ware being their spokesman yesterday, says that he is happy with the recommendations of the Judiciary Committee. And, therefore, I encourage you to reject this amendment and to proceed to give approval to this recommendation from the Judiciary Committee. Thank you.

Questions

Mr. Perez. Reverend, you have stated that you are in favor of checks and balances. Did you know that with respect to a district attorney that under the legislative article he may be impeached by the legislature? He may be removed from office and he may be recalled. Do you consider that to be sufficient checks and balance?

Mr. Stovall. I do not consider that, Mr. Perez, to be an adequate check and balance. All of those processes take a long period of time and they place the responsibility for having adequate evidence to impeach or recall or to file charges of malfeasance. It is not dealing directly with the rights of the human beings who might be concerned in a given case.

Mr. Perez. Would you then be in favor of a super sheriff who could supersede a sheriff who has the primary responsibility of law enforcement, or the super assessor who might supersede an assessor who may be alleged to have not been conducting his business properly, or a super clerk of court, or some other super...who do we pick out just the district attorney to supersede as opposed to all other local officials?

Mr. Stovall. I think there are checks and balances on all of these of whom you speak.

May I conclude with this remark? This is not a question of whether we favor district attorneys or the attorney general. This is a question of whether or not we believe in law and order and whether or not we believe in a system in our state, of enforcing the laws that are passed by the legislature. In Jefferson Parish we have the finest district attorney in the state. He's done a great job. I'm very much in favor of him. But I think there should be an attorney general who in some cases, as this provision says "for cause," should be able to enter into deliberations. And, therefore, I encourage you to reject the amendment that is before us at the present time.

[*Previous Question ordered.*]

Closing

Mr. Gauthier. Mr. Chairman, I'll make it real brief. There are three points that are worth mentioning.

Number 1 is I fail to comprehend why people are so bent on giving the attorney general the power to supersede over a local district attorney elected by local people. I suggest to you that this is telling the people of that district that they cannot do their job. And they want to do their job. What recourse do they have? Elections. If a district attorney does not do his job, I suggest to you that he will not be reelected. Checks and balances were brought up. What better check can you have than the people voting in or voting out an incompetent district attorney. Don't provide that the attorney general come down and supersede, and then have no super officer for the sheriff or the clerk of court.

I suggest to you further that the redactors of the 1921 Constitution made the same error in that they were not explicit and that's why we presently have the situation we have. Nobody's sure whether he presently has or does not have, but it's been interpreted that he does not presently have the power to intercede or supersede local district attorneys. I, therefore, ask you to make this section clear, eliminate number three and stand with the rest of the section as is. Thank you.

[*Coauthors added to the amendment. Amendment rejected: 45-71. Motion to reconsider tabled.*]

Amendment

Mr. Poynter. Amendment No. 1 [by Mr. Newton and Mr. Roy] on page 11, delete lines 1 and 2 in their entirety and insert in lieu, thereof, the following:

"(2) Exercise supervision over the several district attorneys throughout the state and, upon the request of any district attorney, advise and assist in the prosecution of any criminal case, and".

Explanation

Mr. Newton. Yes, this adds to paragraph two the right of the attorney general to supervise the activities of the district attorneys throughout the state. I am sure somebody's going to jump up here in a minute and ask me what exercise supervision means, and I'm not sure I can answer that. That is the language that is presently in the constitution. We've lived with it for a long time and I think, in light of Mr. Toomy's amendment which I agree with, which says "the legislature can provide functions not inconsistent with the provisions of this constitution." I think it's necessary that we grant the attorney general the right to supervise. And I think that scope of the supervision will have to be determined by the legislation.

And the reason I put this in here is because under today's law and the present constitution, the attorney general can require of the various district attorneys reports as to the activities of their office so that the attorney general in the state, and law enforcement agencies can be apprised of the type, number of cases that are being held by the different district attorneys and the disposition that's being made of these cases. I think it's a simple amendment. I don't think it deserves a great horsewhipping.

I'll be glad to answer any questions.

Questions

Mr. Lanier. Mr. Newton, am I correct in that your primary reason for putting in this supervision proposal is so that he can require these reports from the several district attorneys?

Mr. Newton. I think that would be in my mind, the uppermost point.

Mr. Lanier. Are you aware that the requirement to furnish these reports is presently in the statutory law?

Mr. Newton. I think that if we don't put this...I understand it's in the statutory law. And I think that this requirement of supervision would

have to be done not inconsistent with statutory law. And I think that if we adopt the Toomy amendment which I support, that legislation concerning the attorney generals office shall not be inconsistent with the provisions of the constitution, and I think my amendment is necessary to allow this.

Mr. Lanier. Well, but my point is, is if the district attorneys are presently required by statutory law to furnish this information which I believe they are, and if my understanding is correct, that just got reenacted in 1972, would you agree that really this is unnecessary?

Mr. Newton. No, I wouldn't because I think that if you put "not inconsistent herewith", and you don't have some provision in here for supervision, I don't think this...the statute would be constitutional.

Mr. Abraham. Autley, throughout all this discussion here there has always been the questions come up, "but what does supervision mean?" And you yourself made the statement you are not really sure. Wouldn't we simply be confusing the language of the constitution by putting this back in there? It's been left out by the committee and wouldn't it be better just to remain silent on that?

Mr. Newton. I really don't think it would be or I wouldn't be up here with this amendment, and especially in view of the amendment that Mr. Toomy has coming behind it. I don't believe that.

Further Discussion

Mr. Burns. Mr. Chairman and fellow delegates, I was going to wait until after all of the amendments were offered for my few remarks, but I can see, that by voting on the amendments as they are presented it might be a conflict to the remark that I would like to make and to the observations that I would like to make.

I first want to say that for those of you that don't know it, I served as district attorney for twenty-four years and I retired from that office in 1960. I want you to know that what I'm going to say, I hope you will find it very impersonal, and has nothing to do with personalities or with present officeholders.

But I want to ask you at this time to reserve your vote, that is not to vote on any of these amendments that you will later find that's in conflict, if you are satisfied with the proposal as presented to you by the Judiciary Committee. On yesterday afternoon, a speaker from

another committee told you that his committee has spent several hours on the functions and authority of the attorney general. Well, I say to you the Judiciary Committee spent several weeks...several weeks in discussing the powers and functions of the attorney general as opposed, not as opposed, as compared with the authority of the several district attorneys. We drew up several drafts and the proposal that is submitted to you this afternoon was the culmination of what we thought was the most fair and equitable to both the attorney general and to the district attorneys. And I think the best evidence, the best proof of the fairness of this proposal is the remarks that the attorney general made to you yesterday afternoon from this podium.

If you will recall, the only fault that he found was in the interpretation of words between he and the District Attorneys' Association. You will remember that he very readily conceded that the district attorneys had the primary responsibility for investigation of crime, number 1 for the presentation of charges before the grand juries and number 3, for the prosecution of criminal cases on his district. And the only thing different between he and the District Attorneys' Association was with reference to the construction put on different wording of the article...of the proposal.

Now I don't know what words they were, but perhaps it was with reference to...I was trying to think what word that was...anyway with reference to one or two words. But outside of that which he thought could be resolved, he found no fault as far as I could understand with the present provision of...present proposal as prepared by the Judiciary Committee. Now the reason I ask you at this time, because in my opinion the present amendment as proposed, I believe, by Mr. Arnette, in my opinion definitely conflicts with the committee's proposal by adding the word "supervision" in there. Even he said, I believe, that he doesn't know exactly how far-reaching that is, exactly what it would carry with it.

But I submit to you that this provision, this proposal by the Judiciary Committee is fair to the district attorneys and it's fair to the attorney. And I want to say at this time without any fear of successful contradiction, that this Judiciary Committee does not weaken the authority or the power of the attorney general in any way. We've heard a lot about it that it did, but you didn't hear the attorney general

himself, when he was standing right where I am now, say that this proposal weakened his authority in any way. it gives him the right to go into any district where the district attorney has deliberately refused or has let the law enforcement in that district break down. Or where he himself has been guilty of any illegal acts. It gives the attorney general unrestricted authority for cause as established before a court of that jurisdiction with the right of appeal to go in there and supersede the district attorney. Now what could be more fair for both sides, the attorney general and the district attorney than that...?

Mr. Arnette. I would just like to point out that I had nothing to do with this amendment that is now on the floor that Mr. Burns put my name to. He put my good name on the line here as saying I didn't know the...

Mr. Casey. Do you wish the floor, Mr. Arnette?

Mr. Arnette. No, I'd just like to make a correction.

Further Discussion

Mr. Kilbourne. Mr. Acting Chairman and fellow delegates. I rise to oppose this amendment and I heartily endorse what my former friend and co-district attorney, Mr. Burns, we were both district attorneys at the same time, I mean at one time we were both in office and I thoroughly agree with what Mr. Burns says. If you put this supervision back in this article, you open up the same can of worms that we've been...the committee is trying to get rid of. Exactly what this word "supervision" means is just up to anybody's guess, that is, not subject to definite interpretation. And in the case of *Kemp vs. Stanley*, the Supreme Court wrestled with the word supervision that's in the present constitution. And they didn't come up with a definition, they just quoted some definitions. One of them was, they said, supervise and here was the definition they quoted. "Supervise: to oversee for direction, to superintend, to inspect with authority, also, to exercise supervision over." And then they said supervision and they defined that, the quotation, as "act of occupation of supervising, inspection."

Now, I say if that is put back in the constitution we are going to have the same kind of problems that we have been trying to get rid of, and I don't know what future legislature might try to come in and put something in like they did in 1934, if this supervision provision is put

back in the constitution and I think it would be a bad mistake to put it in there. And I ask you to vote it down. Thank you.

[*Previous Questions ordered. Amendment rejected: 16-94. Motion to reconsider tabled.*]

Amendment

Mr. Poynter. Amendments sent up by Delegate Jack to Committee Proposal No. 21 by Delegate Dennis.

Amendment No. 1. On page 11, between lines 6 and 7, insert the following: "(4). For cause when authorized by the court of original jurisdiction, subject to judicial review". And the comma and the word "investigate", which will appear on your copy, have been deleted from the amendment by its author. So it reads: "subject to judicial review, institute and prosecute, or intervene, in any criminal action or proceeding".

Explanation

Mr. Jack. Mr. Chairman, ladies and gentlemen, in Section 3 on page 11, that provides for "with cause" for the attorney general to intervene in a pending suit to supersede the attorney representing the state in any civil or criminal action. Now this (4) that I'm adding, is not the attorney general's amendment. It's nobody's amendment except the people's amendment, for their protection. I'm not going to get into any row about past history. I don't know all that happened way back then. I'm a young man prematurely gray. I dye my hair to look dignified. Now what I want to say is this...Listen, if you will, a minute...I want Mr. Bob Pugh to listen to this because you are good on these things, Bob and this is an important thing. This is necessary in regard to Section 3 of the material we are considering, (3) is for cause when authorized by the court, where the proceeding is already pending. Now, (4) is to take care of a situation and we hope these things don't happen. But they can happen. You have sixty-four parishes. You have numerous district attorneys, in every judicial district and sometimes some of them may not do their duty. Now (4) would be in an instance where there was not a proceeding pending; (3) takes care of superseding where you have a proceeding that's pending in court. But (4), this amendment, reads this way. it's just so short, I'm going to read it again. "For cause when authorized by the court of original jusridiction, subject to judicial review, institute and prosecute, or intervene, in any criminal action or proceeding". Sup-

pose there's no proceeding and there were a lot of bawdy houses in a city near your home. You say that can't happen, but I saw it happen in a certain parish in Louisiana and it wasn't my parish. Now if the district attorney didn't do anything about that, criminal or civil, then the attorney general if he wanted to, he could file into court and show cause why he should not be able to institute and prosecute a case on that. Now this has nothing to do with embarrassing anybody, the court would pass on it. It would be subject to appeal, which is judicial review. I just think that you should have some way of getting a prosecution if a district attorney did not do his duty. Four years to wait, or whatever it is to the next election, would be not the proper thing and of course one man couldn't go out and defeat people. You ought to have safeguards and if you're going to have three, which apparently we are having, you certainly should have four because the worst person is the one that won't act at all, which (4) takes care of and (3) takes care of where the action's been filed but he needs to be superseded because he's not proceeding properly. So I ask that you adopt this amendment. If there are any questions, I'll be glad to answer them.

Questions

Mr. Burns. Mr. Jack, I understand your problem. Do you not, sir, agree that the filing of criminal charges is the first step in a criminal proceeding?

Mr. Jack. I don't follow. To begin with, I don't have a problem. Not on this. I may have other problems, but not on this. This is the people's problem that may arise.

Mr. Burns. I understand , Mr. Jack. What I'm asking you in our Section 3, for cause for the attorney general, it refers to original jurisdiction in which any proceeding is pending. I'm asking you, do you not agree that the filing of a criminal charge is the first step in a criminal proceeding?

Mr. Jack. Well, yes. Why? What's that got to do with it.

Mr. Burns. Well, is there anything to prevent an attorney general in a situation about the bawdy houses or any other similar situations, is there anything to prevent the attorney general from going into the parish and filing a criminal charge against the violators and thus set in motion the criminal proceeding?

Mr. Jack. Well, there certainly is. Read (3), these are things where he can act, because "when authorized by the court of original jurisdiction, in which any proceeding is pending". In other words, the proceeding has to be pending before the attorney general can come in and ask the court to authorize him to supersede that district attorney. That's the trouble with it. If it covered my amendment, I wouldn't be standing up here with it.

Mr. Burns. Now tell me what is to prevent an attorney general or his investigator from filing a criminal affidavit against anybody?

Mr. Jack. Because he don't have the authority.

Mr. Burns.

He doesn't need authority to file a criminal affidavit. Any citizen can file a criminal affidavit.

Mr. Jack. He can't try the case. I'm talking about try it. Certainly, if he got hit over the head in your parish, sure he could go file it. But I'm talking about, from the people. Now in Section 1, over there at the bottom of page 10, he has the right to institute and prosecute, or intervene, in any civil action or proceeding. But he don't in criminal ones. And he has on 10, the right without even showing cause to the court in the civil one, over under 10. So I want him, over in my amendment, if there is no proceeding filed and it's a criminal one, if the court says there's proper cause for him to file that because the D.A. isn't doing it, then he should be allowed to file it. And he don't have a right without this.

Mr. Burns. One question. Could you not come into my parish or could I not go into your parish and file a criminal affidavit against any person I saw fit?

Mr. Jack. Look, Mr. Burns, you know well enough, after practicing law as a district attorney twenty-four years, what I'm talking about. O.K. Certainly if the attorney general, like any citizen, gets assaulted or whatnot and can file like any other citizen. But I'm talking about him prosecuting it. You can't if you get hit over the head in Caddo, and the district...well I won't even use it, because our district attorney won't do it. But suppose you get hit over the head in Mr. Burns' next parish. You can have a warrant issued, you can do all of that. You can testify. But you can't go up there and prosecute. You would be

the prosecuting witness, and you couldn't prosecute. You would have to have authority if you're attorney general. If you didn't have it, I wouldn't have it here.

Further Discussion

Mr. Dennis. Mr. Chairman, fellow delegates, I rise in support of this amendment. I think it is a good amendment and it clarifies the provision that has been proposed by the committee intended. I think the committee intended all along to make certain that where there was an abuse and the district attorney was not doing his job, that the attorney general could go to the court and ask for a court order and initiate a prosecution. I don't see why there should be any objection to spelling that out in clear language, because, frankly our Paragraph 3 to my mind, leaves something to be desired. It says, in a pending proceeding or in a proceeding which is pending. Now I have been told that I don't have anything to worry about there. That a private citizen can file an affidavit and so forth and get it done. Well, if we're all in agreement that the attorney general should be able to go to the court and get a court order to start a prosecution, where this is needed, why don't we go ahead and spell it out like Mr. Jack has done, and I think he has done a good job of it. So I ask you to support his amendment.

Questions

Mr. Avant. Mr. Dennis, I'm sure you don't mean it this way and I don't imply that you do. But just to clarify the air, you are speaking for Judge Dennis and not the Judiciary Committee. Is that correct?

Mr. Dennis. I'm sorry. Maybe I should have pointed that out. I am not speaking for the committee, but this is my interpretation, Mr. Avant, of what the committee intended all along. I don't think the committee intended, by unclear language, to make it impossible for the attorney general to come and get a court order and start a prosecution. And that's what I'm afraid he might not be able to do if we leave it without Mr. Jack's amendment. But the committee, I am not speaking for the committee in supporting Mr. Jack's amendment. I'm speaking for myself personally.

Chairman Henry in the Chair.

Mr. Roy. Judge Dennis, in other words, if a person committed a crime, no question about it and a D.A. for one reason or another did not see fit to bring a bill of information against him or present it to the grand jury and that case were prescribing, that is, if he weren't charged

within so many years after the commission of the crime, he could never be charged, and obviously was guilty, and because of political influence one way or the other was keeping it out. Then the attorney general for cause shown by going to court and getting permission, could actually file a bill of information and prosecute that particular person. Isn't that what it does?

Mr. Dennis. Yes. He, "by a court order". The protection here of the D.A. is the fact that the attorney general has to go to court and get the court order before he can start the prosecution.

Mr. Roy. And the other provision that the Judiciary Committee came out with, would not allow that to happen unless the D.A. has chosen to institute some type of proceeding.

Mr. Dennis. Mr. Roy, I'm afraid it might be subject to that interpretation. I have asked some D.A.'s about this and they say, "no, you don't have anything to worry about, because a private individual can file an affidavit and so forth and so on". But I'm saying, "well, let's make it crystal clear that the attorney general can, after he gets a court order, start a prosecution where one is warranted". Let's don't leave it in doubt.

Mr. Roy. The filing of an affidavit may not necessarily amount to a proceeding being in existence, is what you're saying. Isn't that true, sir?

Mr. Dennis. Yes, sir....

Mr. Arnette. Would a district attorney, such as the one we have in our district, who is doing a good job, have anything to fear from this particular amendment?

Mr. Dennis. I don't believe so, sir.

Mr. Pugh. Mr. Dennis, is it not true that a citizen can, in fact, file an affidavit? But the D.A. has no obligation to act on whatever the citizen has filed?

Mr. Dennis. I believe you're correct, Mr. Pugh.

Further Discussion

Mr. Kilbourne. Mr. Chairman, fellow delegates, I want to say this. The Judiciary Committee of which both I and Judge Dennis are members, wrestled with this problem at great length and all these

matters were discussed in the committee. The committee, by a ....I don't remember the vote, but it was a substantial majority surely, decided upon the language which we have in the article. Now I'm not sure I know just exactly what this amendment means, but I do know this. Insofar as Mr. Jack fears are concerned, it is certainly true that any citizen can go before a justice of the peace or the district judge of a district and file a criminal complaint. The moment that is done, that is a proceeding. It is a pending proceeding. I don't think, in my experience, I just don't think there can be any question about that. Now, if a district attorney just arbitrarily refused to take any action or perform his duty, I think under the Committee Proposal under Paragraph 3, the attorney general could go into court and take the necessary action. Now, gentlemen, I want to say this. I think it ought to require an extreme case for an attorney general to intervene and take over the duties of a district attorney. A very extreme case. I don't think it ought to be allowed, just on a whimsy or somebody that had a political axe to grind. Now when I was district attorney, I had a few cases where there were citizens who, for one reason or another, didn't think that my action was proper. They made complaints to the attorney general and they were referred to me and I did my utmost to get them satisfied. But I assure you, the district attorneys can't always satisfy everybody. I really would like to see this convention go along with the committee proposal. I have the utmost confidence in it.

Questions

Mr. Lanier. Mr. Kilbourne, I believe it's correct that a misdemeanor criminal proceeding can be commenced with an affidavit, is that not true?

Mr. Kilbourne. That's correct. Any criminal proceeding can be commenced with an affidavit.

Mr. Lanier But would it not also be true that with reference to a felony, you must commence the proceeding by a bill of information or an indictment?

Mr. Kilbourne That is not correct, Mr. Lanier. In my practice, any proceeding was always commenced by an affidavit first being filed by someone. In the case you mentioned, it was usually filed by the sheriff or a deputy sheriff. And that was the beginnings of the proceeding. I think that is the way it is handled in most places. A district attorney

can file an information alright without that. A grand jury can return an indictment without an affidavit being filed, in which case, such bill of information or such bill of indictment would be the commencement of the proceeding. But it is also true, that in any case, a person having knowledge can make a sworn statement and can go before the district judge or a magistrate and secure a warrant for a person's arrest. When that is done, the proceeding has been instituted. At least that's my experience, my opinion, based on the experience I have had.

Mr. Dennis. Mr. Kilbourne, don't you agree that it was the intention of the committee to enable the attorney general to go to a court and show cause, and if he could show cause and get a court order, to start a criminal prosecution.

Mr. Kilbourne. Well, Judge, I think if that had been the committee's intention, it would have been no trouble for us to put that in the proposal. We did not do it and certainly....

Mr. Dennis. Also, you don't think that's the committee's intent.

Mr. Kilbourne. I think the committee's intention is just exactly like it's expressed in the proposal, it certainly was my intention.

Mr. Dennis. Well, if that's not expressed in the committee proposal, don't you think we ought to put it in there with this amendment to make it clear, that where there is something wrong in a parish, badly wrong, that an attorney general can go get a court order and start a criminal prosecution, if the court finds that he shows cause.

Mr. Kilbourne. In my opinion, Judge, with the section that we added paragraph....

Mr. Henry. Mr. Kilbourne, you have exceeded your time. Is there any further discussion?

Further Discussion

Mr. Burson. I think that it's important that those delegates who have not been involved in criminal proceedings understand, that in most cases, in fact in all cases that I know about in my parish, before an arrest is even made, a private citizen comes and swears out an affidavit, to show why a person should be charged with a crime. Now when Mr. Jack first broached this idea, I couldn't see where it did any harm. But then when I looked at it, and looked at the language there, it says that the attorney general, as I read it, could institute, investigate and

prosecute a criminal proceeding without ever having had a complaint filed by a citizen of the parish involved. Now I got up and spoke for the committee proposal. I still feel that I'm in favor of the committee proposal. But I am not in favor of the attorney general being able to institute a criminal proceeding without even having a complaint from a private citizen in the parish or the district involved. Now that doesn't make sense to me. I think that opens up the kind of dangers that I spoke against yesterday. That is, it would permit some individual, certainly I don't think the man who's in the office now would do it, but we have had cases in past history in Louisiana where it was done. Where an attorney general could take out after his political enemies by going in and instituting criminal proceedings against them. I think that's a clear and present danger that we don't want to put in our constitution. I think if you've got a complaint made by a private citizen in that parish, that his rights have been violated and that a criminal charge is justified, whether it's a felony or misdemeanor, that you clearly have a criminal proceeding started. Once that complaint is filed, then under the committee proposal the attorney general is free to come in. But I do not think, that the attorney general ought to be able to decide that question for himself. In my view, that puts us right back in the Executive Committee Proposal that I spoke against yesterday. I must take that position.

Questions

Mr. Goldman. Sir, isn't it true that a district attorney now has the power to quash even an indictment, brought out by the grand jury of someone whom he knows and the grand jury knows and that person who made the complaint knows, of complete guilt, if the district attorney so desires?

Mr. Burson. Yes, sir.

Mr. Goldman. And if that's true, what recourse has the person who made the complaint to get the case into court, unless he could complain to the attorney general and then the attorney general would go to the court and ask for a review and see if he can get the thing prosecuted.

Mr. Burson. I don't see any reason at all why that can't be done simultaneously. What I'm saying is, that you ought to have at least one individual in that parish concerned enough about it to file a complaint, simultaneously with the attorney general applying to the

court for the authority. I don't see any reason at all why that couldn't be done.

Mr. Willis. Mr. Burson, what disturbs me is the "show cause hearing". We have to put the parties in proper perspective. It would be the attorney general versus the district attorney, wouldn't it?

Mr. Burson. Yes, sir.

Mr. Willis. Now, at that "show cause hearing" the prospective defendant to be prosecuted will be tried in absentia. Isn't that correct?

Mr. Burson. Yes, sir.

Mr. Willis. Now, suppose the attorney general prevails, then this defendant who has not had his day in court will have been proved guilty by inference. Isn't that correct?

Mr. Burson. That is exactly the reason why I cannot see how you can possibly permit this power without having an affidavit and a charge filed by some private citizen in the parish.

Mr. Willis. Additionally, the word "investigate" was stricken. How can the attorney general with surety and security, endeavor to supplant the district attorney if he has not investigated. If "investigated" is left in, that would allow him to forage his way in each judicial district to investigate. Isn't that correct?

Mr. Burson. Yes, sir. I don't see what you can investigate until the charge has been filed.

Mr. Willis. Precisely. So as I take it, would you agree with this statement? That this amendment suffuses invisible virtue in a visible issue?

Mr. Burton. Yes, sir. I think I understand what you meant.

Mr. Rayburn. Mr. Burson, could you state for my information, it says "for cause when authorized by a court of jurisdiction, original, jurisdiction." Now what would be the cause? What are they talking about, say "when cause"? Could the attorney general of this state come into my parish and say, "judge, I just want to go look over old Rayburn. I believe he has been doing something wrong". What are you talking about when they say "cause"?

Mr. Burson. Senator Rayburn....

Mr. Rayburn. Would they have to prove that the local D.A. has failed to do his duty? I'm just trying to get the definition of "cause". That could mean anything in my mind and I'm not an attorney.

Mr. Burson. I think this is certainly going to have to be defined. But you put your finger on another thing that's wrong with this amendment. You say "for cause when authorized by the court of original jurisdiction". I don't see how you can have a court of original jurisdiction when no charge has been filed. Because how do you know what court it's going to be filed in. Some charges can be filed in either city court or district court, for instance.

[*Previous Question ordered.*]

Closing

Mr. Jack. Mr. Chairman, ladies and gentlemen, the reason I fixed this amendment, I'm not criticizing the committee, our committee is going to do the same. Paragraph 3 was not clear. As I repeat, this is not aimed at any district attorney. It's not the attorney general's amendment; this is my amendment. Paragraph 3 don't cover the situation and I thought it needed amending and that's why I did it. I saw it in the legislature and I'm not speaking against district attorneys, I love them. We've got one of the finest going, John Richardson. It's like I'm a great admirer of the governor; I don't agree with him on some things we were talking about this morning. But that's what we are down here for, is to come up with as good a constitution as possible. These things are not personal to me. If you don't want this thing in here, it's not going to offend me, whatever you put up there. But I'm telling you, I'm just trying to protect the people from a horrible thing that could happen. District attorneys have more power in Louisiana than any state in the Union. I don't know of another state in the Union, where a grand jury can indict a man for murder and the district attorney can nol-pros that case even if that happened in front of ten thousand witnesses at a football game and they captured the killer on the fifty yard line. If he wanted to, he could nol-pros that case, if there were eighty thousand witnesses. That's a lot of power in one man. When you got not one man, but you have a district attorney for every judicial district, you ought to have some way, if things are not proper, that the attorney general for cause, shown to the judge there. Are you going to think your judges are crooks, if they are going to let the attorney general just come into your parish and your judicial district and do

things to your district attorney? Of course not. But situations do arise and prescription runs against any crime in Louisiana except murder or a capital offense. If the district attorney don't act, they are elected for six years, most any kind or type of felony is prescribed in that length of time. So I say, you do have a necessity for this. Whether you ever have to use it or not, is another question. It's up to you. I just present things....if you want to clarify (3) and have protection if you ever need it. It's just like having a pistol at your house. You hope you never have to shoot anybody, but if somebody is trying to mess you up, you're darn glad you had it.

Questions.

Mr. Anzalone. Have you given any thought to....I know you have given some thought to the nol-pros authority by the district attorneys. But have you given any thought to what would happen in a case where the attorney general, who was about the same caliber of a fellow that you were talking about, that would nol-pros that murder that happened in front of ten thousand people, decided that he was going to get on somebody, when he really didn't have any cause, and the publicity that would be given to the trial, or the hearing, to show cause, why he should not be able to attack a particular individual. And this individual would not be there. Don't you think this is slightly unfair?

Mr. Jack. You're going to have to assume, sir, that not only are we going to have a crooked district attorney or crooked attorney general; you've got to assume you're going to have a crooked judge that holds these....the attorney general has cause....just can't assume everybody's crooked.

Mr. Anzalone. Well, aren't you assuming that the district attorney is?

Mr. Jack. I'm not assuming. I'm saying if it turns out he doesn't do his duty, we need (4). If you uphold the committee, you've already assumed that he wouldn't do his duty and that's why you have (3), which is worded the same as mine, because when authorized by the court of original jurisdiction". The only thing is the committee just allows him to supersede a D.A., where the proceedings are already filed. In other words, you approve it where the D.A. has filed it, but is not doing his duty. Well, that to me is ridiculous. Why not if he won't even file the thing, let them by showing cause to the judge, let the attorney general file the thing and prosecute him. This committee

certainly didn't intentionally do something that would be ridiculous. They want to cover the whole situation. The whole thing is to correct a district's attorney that won't do his duty, once he's filed it, that's (3), (4) is where he hasn't filed it.

[*Amendment rejected: 40-74. Motion to reconsider tabled.*]

Amendment

Mr. Poynter. Amendment No. 1 [by Mr. Toomy]. On page 11, at the end of line 9, delete the period and insert the following: "not inconsistent with the provisions hereof."

Explanation

Mr. Toomy. Mr. Chairman, fellow delegates, as you and I know this convention and particularly the Judiciary Committee, has spent quite a bit of time on this particular section. I offer this amendment irregardless of what powers and duties this convention finally provides concerning the office of attorney general. The enumerated constitutional powers and duties that we do provide should remain intact, as this convention intends them to, not to be diminished or impaired by future legislation. This amendment is in no way intended to limit the powers and duties that we do set out in this section, but simply is offered to assure the retention of these powers and duties as set forth by this convention. Mr. Chairman, I'll answer any questions they may have.

Questions

Mr. Arnette. I just have one question, Joe. I don't understand. Do you think there could be a statute passed that could be inconsistent with the constitution and be upheld as constitutional?

Mr. Toomy. It may not directly contradict the constitution. But it seems to me that it may in some way impair or hamper the performance of the duties and functions that we provide for. Also, there's been some question, as some of the delegates asked, as to the significance of these statutes which are provided for by the constitution. Whether this may be in some form of superstatute or something. If you notice, we provide that the attorney general have such other powers and functions, as provided by statute. There has been some question as to the significance of what these powers may be.

Mr. Arnette. Well, the only reason I was asking this is because we did this on no other elected officials' duties and I saw no reason to do it

here. Because if it's inconsistent with the constitution, its [it's] unconstitutional.

Mr. Toomy. Myself and a number of other delegates had misgivings after looking back at when we did provide that in other sections. It may well provide that we go back and look at that in the other sections.

Mr. Roy. Joe, I hate to talk against it, in a [unreadable] But, I'll ask you a question. Why do we need that? If something is inconsistent with a constitutional provision or act, it's unconstitutional. If it's not contradictory to a constitutional provision, then it's constitutional. So why do we have to go around and start adding this little phrase every time somebody gets a notion that it doesn't say that? Any law that's inconsistent is unconstitutional.

Mr. Toomy. Well I just think, Mr. Roy, that if you notice, we just provide in three cases here to enumerate three powers or duties and leave it open for additional powers and duties, which I am sure will be forthcoming in the future. It's just that whatever the legislature does provide, that these would in no way impair the duties and powers that this convention provides, just to clarify it.

Mr. Pugh. Sir, as it presently reads in the committee proposal, it has reference to other powers. That means that the powers not enumerated in (1), (2) and (3). The legislature can give it additional powers. Is that not correct?

Mr. Toomy. No, it can give additional powers.

Mr. Pugh. It cannot?

Mr. Toomy. It can, I said.

Mr. Pugh. Yes, that's what I'm saying. It can give it additional powers. But by a legislative act, it can't do anything with these existing three powers. Is that what you're concerned about?

Mr. Toomy. We just want to preserve whatever powers we do retain in this (1), (2) and (3), whatever they might be.

Mr. Pugh. You don't think the phrase "other power" takes care of that?

Mr. Toomy. No, sir. Especially if you notice this is a separate paragraph. I have some misgivings as to when you refer back to the beginning of the statement. I just want to make it perfectly clear that

whatever powers and duties we provide for would not be infringed in any way by the legislature. You're correct that the legislature would expand on these powers and functions and enumerate additional powers and functions, but in no way impair or hamper the powers and functions that we provide for here.

Mr. Pugh. I may be in error, sir, but it would have seemed to me that they couldn't touch any one of these three powers. That would be my interpretation. I take that side of it.

Mr. Toomy. I just thought this amendment would make that perfectly clear.

Mr. Perez. Mr. Toomy, isn't it true that you have a specific authority on line 7, which says, "he", meaning the attorney general, "shall have such other powers and perform such other duties as may be authorized by statute." Unless you put these words "not inconsistent with the provisions hereof", that it may be interpreted to be able to give unlimited authority to the attorney general, in spite of the provisions which are in the constitution.

Mr. Toomy. There was the misgiving, Mr. Perez, that myself and some other delegates had had with setting this out as a separate paragraph, as it's worded presently.

Mr. Jenkins. Joe, do you feel that unless we adopt this amendment that the legislature might well be able to authorize, in a case where....Subparagraph (3), the attorney general to go in and supersede any district attorney, even when there was no cause, as limited in Subsection 3. In other words, do you think your amendment would protect against in somehow diminishing the limitations set forth in those first three paragraphs?

Mr. Toomy. I don't think it would any way diminish the powers and duties we set forth. But it would provide that there would be no legislation contrary to these powers and duties that we set forth. Contrary, I mean, not only directly but any thing to impair the performance of these powers and duties.

Mr. Jenkins. Well, I'm talking not so much about impairing the powers, but do you think that without your amendment that the legislature might....

Further Discussion

Mr. Tobias. Mr. Chairman, fellow delegates, don't be confused. This is not a technical amendment of any sort whatsoever. This amendment is an attempt to go in the back door, what they haven't been able to get in through the front door. What does it do? Well, as I read it, it would just provide, in effect, wipe out any statutory powers that may be delegated to the attorney general, no matter how minimal. It's surplus language, also, because any statute that would be enacted, that would be in conflict with the provisions of this section, would be invalid. I urge its defeat.

[*Previous Question ordered. Amendment rejected: 30-81. Motion to reconsider tabled.*]

Amendments

Mr. Poynter. Amendment No. 1 (by Mr. Perez). Page 11, line 3, after the word "for" and before the word "cause" insert the word "proven".

Amendment no. 2. Page 11, line 3, after the word "by" and before the word "the", insert "a majority of the judges of".

Explanation

Mr. Perez. Mr. Chairman, and ladies and gentlemen of the convention, I know that there has been a great deal of question about the words "for cause". There are many of us who do not know what that means, but one of the things that concerns me and many of the delegates is, could that be "alleged cause" or "proven cause." I believe it would be well for us, it is technical in nature as far as I am concerned. I believe all of us would understand that it would be "proven cause", but that it would be well to include and insert the word "proven" in order that it could not be interpreted to mean "alleged cause". With respect to the second amendment, I have discussed this matter with some of the members of the committee. Some have told me that when they say that "for cause and authorized by the court" some would say, "well, they mean a majority of the members of the court: and others would say, well, they don't know what it means, and others say that it means one member. I would like to suggest to you that because this is a most unusual proceeding, that before such a supersession would be authorized that it should be authorized by a majority of the members of that court rather than by just one judge. I submit, I ask for favorable adoption of the amendment.

Questions

Mr. Gravel. Mr. Perez, are you familiar with the fact that the words "for cause" as they are contained in this amendment are also the basic words that are used in the civil service law and that as a consequence there have been no real judicial problems with that.

Mr. Perez. Well, I am only addressing myself at this time as to "proven cause" not "alleged cause". I just would believe that it would be better for us to make it clear that what we are talking about is the fact that the attorney general must prove that cause and not just allege it. I am concerned about the interpretation with respect to whether it would be an "alleged cause", that is, if he alleges in a petition that there are certain causes, whether that would be sufficient or whether he would not have to prove that cause.

Mr. Gravel. Well, isn't that fully taken care of by the other provisions, that submit the "for cause" concept to full judicial review by the courts".

Mr. Perez. No, I don't believe so, sir. Because nowhere does it say what "for cause" is. And of course I have a lot of question (questions) about that, but when you just say "for cause", it just gives me concern that it is possible that there would be an interpretation which would say that all the attorney general has to do is allege his cause and not prove his cause.

Mr. Gravel. But, my first question... very quickly is this. That "for cause" are the two words that are used both in the civil service law and in the Civil Code I believe. I know in the civil service law in the constitution and the court has had no difficulty in interpreting that to mean "for just cause" it has been proved. I think what you are suggesting is unnecessary.

Mr. Perez. If you know the interpretation that has been given by the courts in "for cause" in the Civil Code particularly, is very, very varied, and if all of those causes of the least of causes sufficient consideration is included, then it might be just the minimal of causes which would give the attorney general the right to supersede.

Mr. Hayes. Mr. Perez, when you say, "a majority of the court" are you talking about a judge in a district where you may not have but one?

Mr. Perez.

Yes. We are talking about a judicial district here. Now when you are talking about in the original, when the case is filed originally, in some jurisdictions there may be only one judge in which a majority would be that one. In many jurisdictions there may be four or five or six district judges. I am suggesting to you first that the meaning of these words now when it says the "court", it may mean even all of the court or a majority of the members of the court, but in my judgment before such drastic action is taken it should at least require a majority of the members of that district court.

Mr. Hayes. Where there is one judge, that is one; if it is more than one, then a majority....

Mr. Perez. If there are three, for instance, two out of three would have to agree.

Mr. Hayes. If it is two, then what?

Mr. Perez. Well if there are two, then of course you would need both in order to have a majority.

Mrs. Warren. You answered one of the questions, Mr. Perez, but I wanted to know that since Mr. Jackson's amendment was defeated, how would the attorney general prove that word proved, how would he prove that "for cause"?

Mr. Perez. Well, Mrs. Warren, I don't believe that any of us had the intention of allowing the attorney general to just come in and to allege that the district attorney has not been carrying out his duties and just be virtue of barely alleging it, come in and take over the functions of a district attorney and supersede him. That is the very thing that I was so concerned about, that he must come in and not only allege but also prove the causes for which he would supersede a district attorney.

Mrs. Warren. Well, that is what I wanted to know because I don't appreciate that word "allege". I think in all cases it should be proven.

Mr. Perez. Well, by "allege" I mean that he would state in his petition what it was that he was complaining of, but, in addition to that, he would have to prove it.

Mr. Roy. Mr. Perez, is there any other place in the law where a district court has to have an en banc, or all the judges sit to hear anything to rule on it?

Mr. Perez. I can't answer that offhand, but I do say that this is such an unusual proceeding and we are for the first time giving under certain circumstances the right to the attorney general to supersede a district attorney that I do believe that it should require more than one judge of that district in order to authorize the supersession. It should be a most unusual proceeding and therefore, a majority of the members of the court should be required before an attorney general could supersede a district attorney.

(*Motion or Division of the Question.*)

Further Discussion

Mr. Pugh. Mr. Chairman, and fellow delegates, it is a matter of grave concern to me insofar as Amendment No. 2 is concerned. That if for any reason one felt justifiable cause to exist that we would in effect shut down an entire criminal district for the purpose of the resolution of this problem. I am told that there are eleven criminal judges in Orleans. Meaning no reflection, but it is inconceivable to me that all the criminal business in Orleans will be shut down while this one proceeding is being handled and that as I read the amendment, it necessarily follows that it must be an en blanc [en banc] hearing. Obviously, it wouldn't be a problem in a parish that had only one judge. We have five, I would hate to see ours shut down. Unfortunately, in every parish but Orleans, when a judge sits as a criminal judge, if you sit all of the judges as criminal judges, you are not only going to shut down all the criminal work, you are going to shut down all the civil work. I don't believe that that is justified in view of the fact that if the attorney general is successful in the district court by appellate review, it necessarily follows, you will have many more than one judge among the three that would be sitting on the question. The criminal case probably the Supreme Court could have all seven of them siting on it. I therefore rise in opposition to amendment No. 2 as proposed by Mr. Perez.

Question

Mr. Vick. Mr. Pugh, I didn't hear that you made any reference to Amendment No. 1. Isn't it a fact that "for cause" is a term of art in

the law that is well known to lawyers and is amply defined in the jurisprudence of our country and this state?

Mr. Pugh. I think the phrase "for cause" is acceptable; however, I didn't want to take issue with both of the amendments because I felt so strongly about the second amendment, and the first one is one of structure and it is neither going to hurt or help as far as I am concerned.

[*Previous Question ordered.*]

Closing

Mr. Perez. Just briefly again I would remind you that this is a most unusual proceeding and that before such an unusual proceeding should be allowed to occur, the supersession of the district attorney, it should require a majority of the judges of that judicial district, and in my judgment it is possible that's what the present provision means, but I think we should clarify it. I ask that you vote favorably on this amendment.

[*Record vote ordered. Division of Question ordered. Amendment No. 1 reread and rejected: 55-60. Motion to reconsider tabled. Amendment No. 2 reread and rejected: 40-74. Motion to reconsider tabled.*]

Amendment

Mr. Poynter. Amendment No. 1 (by Mr. Dennis). On page 11, line 4, immediately after the word "proceeding" and before the word "is" insert the words "or affidavit".

Explanation

Mr. Dennis. Mr. Chairman, and fellow delegates, during the discussion on Mr. Jack's amendment, Mr. Burson and others said that under Paragraph 3 of the committee proposal, that an affidavit would constitute a proceeding. That the attorney general, if a private citizen filed an affidavit, would be able to come and "for cause" get a court order to conduct the prosecution. I am not sure that affidavit is clearly included within the word "proceeding". It may be, but I do not think that is clear, and I am afraid that it might be interpreted otherwise, so in order to make it clear I am offering this amendment to say that for cause when authorized by the court of original jurisdiction in any.... in which any proceeding or affidavit is pending, and that the attorney general could, after showing cause and subject to judicial review, come in and ask for an order to supersede the district attorney.

Questions

Mr. De Blieux. Judge Dennis, wouldn't this amendment permit the attorney general to come into a case of where some complainant has filed an affidavit and the district attorney just refused to do anything about it?

Mr. Dennis. It would permit him to come to the court and ask for a court order, and if the court decided that he had shown cause could grant the order.

Mr. De Blieux Yes.

In other words it would keep....from just absolutely passively resisting an affidavit that had been filed in that case. He would have to show cause why he didn't want to prosecute.

Mr. Dennis. Well no, the burden would be on the attorney general to show cause why he should be allowed to step in and conduct the prosecution.

[*Previous Question ordered. Amendment adopted: 70-39. Motion to reconsider tabled.*]

Amendment

Mr. Poynter. Amendment No. 1 (by Mr. Arnette). On page 11, delete lines 10 through 13, both inclusive, in their entirety.

Explanation

Mr. Arnette. This is just a technical amendment, ladies and gentlemen.

No truly it is a technical amendment, it has exactly the same language and not quite as much detail as the Executive Article that we have already passed. We have already provided for the attorney general's first assistant to take over until the election of a successor. So this language is no longer needed, and it is just technical in nature. I talked to judge Dennis about it, and he said that it is the same thing and he is in agreement with it.

[*Amendment adopted without objection. Previous Question ordered on the*

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MR. DERBES

For this very simple reason, Mr. Willis. Because when one—when a person tries to define on a crime by crime basis who is to go to what court and under what procedures he is to be tried, one eventually does a certain amount of injustice....because certain particular types of crimes, although they may qualify as such, are relatively minor.

[*Record vote ordered. Record Quorum Call: 109 delegates present and a quorum. Amendment adopted: 78-35. Motion to reconsider tabled. Motion to limit debate on the Section to five minutes adopted without objection.*]

Further Discussion

MR. JENKINS

Mr. Chairman, think back, if you will, to the Bill of Rights.... think back if you will, to the Bill of Rights...think about the protections we gave to people accused of crimes. You know, I've voted in favor of every single protection for people accused of crimes included in that Bill of Rights. You know what we are talking about here, though? We're talking about people who we know to be guilty, and what's going to be done with them; whether or not there is going to be adequate safeguards and protections for the public. I don't think that this procedure here grants to the legislature the authority to deal with different crimes differently, or different people differently. For example, look at Exception Number 2. How can that square with the equal protection clause? How could you give one juvenile accused of armed robbery the protection of juvenile procedures, and not give it to another juvenile also charged with armed robbery? You could not. Think about Number 1—Exception Number 1. It does not say exceptions can be made for people accused of specific crimes. It only says you can lower the age for juveniles as to whether or not they are going to be tried under juvenile procedures.

Mr. Derbes said that he did not – I believe it was Mr. Derbes – no, or Mr. Pugh said, that he did not feel the acts passed by the legislature would be unconstitutional under this provision. Was that you, Mr. Derbes? Judge Dennis told me, not fifteen minutes ago, and he is the coauthor of this, that he thought it would be unconstitutional –

This section needs sixty-seven votes to pass. A similar provision in the 1921 Constitution has hampered seriously the prosecution of people who have committed serious offenses against the people of this state. I certainly urge you not to lock into this constitution a similar provision which can do nothing more than hamper the prosecution of such individuals. You can be sure the legislature will provide protection for juvenile deliquents. But we need procedures to deal with people who have engaged in serious offenses. I certainly urge the rejection of this section.

Delegate De Blieux in the Chair

[*Previous Question ordered.*]

Closing

MR. DENNIS

Mr. Chairman, fellow delegates, I'll be very brief. The reason I am supporting this, the reason that I think this is different from what I have opposed in the past, is that this does not constitutionalize the age limits. It allows the legislature flexibility. The only thing it does, it requires the legislature to get a two-thirds vote before bringing into adult court, people who are now being treated as juveniles, I think that we are entitled to that. Or the juveniles are entitled to that much pause and reflection before the legislature takes an act on this area. So, I ask you to support this delegate proposal as it has been amended.

Questions

MR. BURSON

Judge Dennis, is it clear to you that under the language of this proposal, in this amendment, that the legislature could classify, let us say, in the example of a multiple juvenile offender, just as they classify in criminal law for a third offender who will get a greater sentence than a first offender for a particular crime?

MR. DENNIS

It's clear to me that under the last part of this amendment, in establishing a procedure by which the court of original jurisdiction could waive juvenile procedures and have adult procedures apply, that the legislature could use that as one of the criteria. The legislature could say when a juvenile has committed X number of offenses of a certain nature, then the juvenile court may use this as one of the criteria by which it can determine that it shall waive its juvenile jurisdiction, and let that person be tried as an adult.

MR. BURSON

So that they could classify both by the gravity and frequency of the offenses then?

MR. DENNIS

I think they could use any reasonable criteria. I think that would be a reasonable criteria.

[*Section passed: 80-29. Motion to reconsider tabled. Previous Question ordered on the Proposal. Proposal passed: 98-13. Motion to reconsider pending.*]

Chairman Henry in the Chair

MR. HENRY

Mr. Burson now would move to reconsider the vote by which Committee Proposal No. 4 on the Executive Article was adopted, to reconsider the vote by which it was adopted.

Is there objection?

For the purpose of....he's going to then move to suspend the rules for the limited purpose of offering an amendment on Section 1 relative to the powers of the attorney general, as I appreciate it.

[*Motion to advance to Proposals on the Calendar for Approval of Final Styling adopted without objection. Motion to reconsider Committee Proposal no. 4 adopted without objection.*]

PROPOSALS ON THE CALENDAR
FOR APPROVAL OF FINAL STYLING
Committee Proposal No. 4
Reconsideration
Point of Information

MR. RAYBURN

Mr. Chairman, I would like for Mr. Burson to explain to us the change that he purposes to make before we vote on the reconsideration.

MR. HENRY

Well, now, we've already voted on reconsideration. This is a....

MR. RAYBURN

I mean suspension of the rules.

MR. HENRY

All right, Mr. Burson, if you will..this is not debatable... but if you will, you might better hit your reasons for your motion a lick or two there. I mean, explain it.

Explanation

MR. BURSON

Thank you.

Mr. Chairman, fellow delegates, I think Senator Rayburn's request is entirely appropriate. I would ask you to pull from the many papers you have the following material so that you might better understand the explanation I will try to make:

First of all, Section 26 of Committee Proposal no. 21, the Judiciary Article, which deals with the powers of the attorney general; secondly, it would also be helpful if you would have available Article 7, Section 56 of the old constitution, the '21 Constitution in your book; then, of course, the packet of four amendments that have been passed out. The objective here is purely and simply this...to remove from the Judiciary Article and put in the Executive Article the office and powers of the attorney general. This has been a bone of contention throughout this convention. Quite frankly, I was on the team of the people that wanted to keep him in the Judiciary Article when this contention began. One of the reasons I was is because I didn't know what the

effect of the reallocation and allocation of powers in the reorganization section of the executive article would be on the attorney general. If you will look at the first amendment, I think that problem is taken care of. The amendment on the first page says that "the powers, functions, and duties allocated by this constitution to any executive office, or commission (which takes care of the public Service Commission problem raised by some people yesterday) shall not be affected or diminished by the allocation provided herein except as authorized by Section 22 of this article." Section 22 of the Executive Article, of course, is the article which permits the legislature to decide that three of the offices may become appointed rather than elected.

But, other than Section 22, this makes it clear that all of the executive offices that we provide for, all of those that you are interested in, or commissions that you are interested in, that we have provided for in this constitution, cannot be diminished or deleteriously affected by the original allocation provided for into twenty seven executive departments.

In the second place, if you will look at the Executive Article, and look at Section 1 (C) of the Style and Drafting, you will see that any reorganization or reallocation of powers, excepts all functions, powers, and duties allocated by this constitution. So, I think with the addition of the sentence that we are suggesting here, you can be assured that it will not be possible under the guise of either the original allocation into twenty departments, or, in a subsequent reorganization, to gut one of the constitutional offices that you have created during the course of this constitutional convention. I think for that reason that this amendment may be the most important amendment that is offered here.

[*Motion to suspend the rules to reconsider Committee Proposal No. 4, Section 1 for the limited purpose of considering the Burson amendment adopted without objection.*]

Reconsideration

Amendment

MR. HARDIN

Amendment No. 1, On page 1, t the end of line 23, after the word and punctuation, "departments", add the following sentence:

"The powers, functions, and duties allocated by this constitution to any executive office or commission shall not be affected or diminished by the allocation provided herein except as authorized by Section 22 of this article.

Explanation

MR. BURSON

I think I have explained this thing as well as I know how to explain it. I will be happy to try and answer any questions that anyone has on the point. I made the point earlier that this affects more than just the attorney general. I think it's a guarantee which extends to all of the executive offices or commissions that we have herein created. We've had some arguments here even today about the allocation, or reallocation of powers that might apply to particular commissions.

Questions

MR. BURNS

Mr. Burson, just for the record, in discussing this matter with you some time today, am I right that you told me that the board of the committee of the District Attorneys' Association had approved or consented to this amendment that you're now getting ready to explain?

MR. BURSON

I think it would be correct to say that even though they have previously and we have, I have previously, argued against giving the attorney general any original criminal jurisdiction that we are satisfied with the compromise which the amendment that's being offered here next would involve. But, that we were concerned that if you put the attorney general in the Executive Article, that you better be sure you were guaranteed that his powers could not be affected by any reorganization which is the purpose of this first amendment.

MR. BURNS

No, but didn't I understand you or one of the other gentlemen to say that the District Attorney Committee, or whatever they have met on Saturday and agreed this wording was acceptable to them?

MR. BURSON

Yes, sir.

[*Amendment adopted without objection. Previous Question ordered on the Section. Section passed: 106-0. Motion to reconsider tabled.*]

Personal Privilege

MR. THOMPSON

Mr. Chairman, I've got a half of a letter addressed to Governor Edwards with no signature on it or none of the rest of it, what is this?

MR. HENRY

If it's addressed to Governor Edwards, I wouldn't know Mr. Thompson, I haven't seen it.

MR. THOMPSON

Well, it's being passed out here in the convention.

MR. HENRY

I haven't seen it unless it's what Senator Rayburn showed me, and I understood it was not being passed out. I have not authorized anything to be passed out. If you will find out who gave it to you, we will chastise him, or her, or them.

MR. THOMPSON

I don't believe you want to jump on the little lady that's passing them out; do you?

MR. HENRY

Well some people like to jump on little ladies and some don't, Mr. Willis.

MR. WILLIS

Mr. Chairman, I have the same grievance as Representative Thompson. It may be unbecoming of me to say so, but I reject, repudiate, refuse, and resent the passage and putting on my desk of a letter signed with two crosses, which most certainly must attest to its authors double illiteracy.

MR. HENRY

I don't know what you meant, Mr. Willis, but I think I agree with you, sir.

Personal Privilege

MR. RAYBURN

Mr. Chairman and fellow delegates. I do not know who passed this letter out because I received a copy. If you will look in the first paragraph, this letter is addressed to the governor of this state and it says "Dear Governor Edwards". It goes on to say that "I don't believe the governor understands"—do you believe that?—The basic concerns about the property tax provision which the constitutional convention seems tentatively to have agreed upon." It further states that "so many motives have been attributed to us by such careless speakers as Mr. Chehardy, Mr. Bussie, and myself. The only way I know how one would define a careless speaker is to have a careless mind; I guess Mr. Steimel has that. I don't know much about that gentlemen but since he seems fit or saw fit to write the governor of this state and tell him that I was a careless speaker, which I know the governor don't believe, because I read in the paper the other day, I went home, when so many of you fell off the log—Mr. Roy, Mr. Gravel, and all of you people that passed all them bad things—and now you are trying to get back on the log; when all of you fell off I left. The next morning I was drinking coffee with my wife—she hadn't seem me in quite a while, and my dogs....I went to feed them and they barked at me and tried to bite me, but I finally made peace with them—and I was reading the *Times-Picayune* and it outlined, I believe, nine things the governor was against. You know I had been to this mike and opposed every one of them but one? The only reason I didn't oppose that, he had agreed to it earlier—-that was the ten and fifteen percent that the tax assessors proposed and passed through this body. I say, "well, I'm not doing too bad and me and old Edwards are getting along pretty good." I was laughing and she wanted to know what I was laughing about. Well, I told her. I said "I tried to stop all these things before they happened, but I was in the minority." But, low and behold I come back and I get a copy of where Mr. Steimel wrote to the governor and he said people like myself was using careless words—-Mr. Bussie,—putting me in the category with Vick and Lawrence. Well, for a little top-water I'm doing pretty good, ain't I? Well, let me tell you, I just tried to find out a little about Mr. Steimel. I found out he was born in 1922 in a place called Running Lakes in Arkansas. Well, I called a few people up there and they said he had been running ever since. The

little town he was born in was called Pocahontas, and he has been hunting ever since. Well, he couldn't find nothing in Arkansas and he came to Louisiana; so, we got him. I don't know what we are going to do with him, but he's here. He was an elementary school teacher. He is a Public Information director. He was at the Arkansas State College and I don't know why they discharged him, but evidentally they let him go. Then, he came to Baton Rouge in '49 and he has been here ever since. But, I just want to say this about this letter. I have nothing to do with the passing out of this. I don't know who passed it out. But, I would like to say that I'm glad to be in the midst of some other careless speakers. But, I speak for the people of this state; I always have and if I live out this term, will be thirty-two years I've spoke for them. Maybe I've spoke wrong, but they've sent me back. Maybe they don't know me. But, I didn't hail from Arkansas. I didn't come from the city named Running Lakes. I didn't come from a village called Pocahontas. I haven't been hunting. I've been down here trying to do a job. I don't necessarily agree with Mr. Steimel. I think he's got a right to his views, but for his to write a letter to the chief executive of this state and to say that you people, and you know how many times I've been to this mike—well, McDaniel back there you know that and a lot of other delegates know it—and that I have been doing a little careless talking. Well, maybe I have. But, the only talking I've done before this mike is talking for the people of our great state and I have no apologies. I didn't get a copy of this letter. I don't know whether Mr. Bussie got one, he operates in a lot of circles that I don't. Mr. Chehardy can be everybody's sweetheart and nobody's gal, but he is still my friend and I get along with him. But, I don't know, Mr. Chairman, who passed this out. If they did it in violation of our rules, I'm sorry and I apologize. But, I have no apology to make to this convention or to the people of this state for the careless talking that I have done to this convention. I am among a lot of our delegates who has done some careless talking, in my opinion, and are now trying to correct it. Thank you very much.

MR. HENRY

Gentlemen, we usually don't go along with this question business on personal privilege. I don't know who.....I don't think anyone authorized the sending out of that letter because it doesn't have the O.K. with the initials on it. But, if the pages or page who first got it

and started passing it out will let me know where you got it, I would appreciate it. I might say that, Senator Rayburn, I heard you accused of having careless hands but never a careless speaker.

Personal Privilege

MR. CHATELAIN

Mr. Chairman, I would like to ask that the Chair direct its staff or someone to try to determine whether or not, in fact, this letter was sent out--originally in October 31, 1973--was sent out from the offices of PAR.

MR. HENRY

I assure you, we will try to get to the bottom of it.

MR. CHATELAIN

I think that someone is trying to play a joke, and someone is trying to take it seriously here.

Personal Privilege

MR. RAYBURN

There is no doubt in my mind, Mr. Chairman, PAR sent this letter out. Mr. Chatelain, I don't know if Mr. Steimel is here or not, but if he is, let him come down. This is a letter bound by his signature and it is a letter sent out by his office; it is signed, and I have the original....a copy of it, it is a letter signed by him. He's got a right to call me a careless speaker. I can't really call him what I think he is because I don't want to get engaged in that, but he called me that to the governor--and that's all right with me--but it is a letter that came directly from PAR's office sent to the governor of this state; I can assure you that.

Point of Information

MR. PUGH

Well, Mr. Chairman, we got four days and eight hours to get through here; can we get on with the regular course of some business?

[*Motion to suspend the rules to reconsider Committee Proposal No. 4, Section 8.*]

Point of Information

MR. AVANT

Is that a debatable motion?

MR. HENRY

No, sir, it's not a debatable motion. We are going to read the amendment here and let Mr. Burson sort of make his quick explanation of it.

Amendment

MR. HARDIN

This amendment is sent up by Delegates Henry, Gravel, Pugh, Graham, and Alphonse Jackson.

Amendment No. 1. On Page 5 – this is in your first enrollment, Mr. Abraham-delete lines 22, 23, and 24 in their entirety and all amendments thereto and insert in lieu thereof the following:

"Section 8. Department of Justice

Section 8. (A) There shall be Department of Justice, headed by the attorney general, who shall be the state's chief legal officer. The attorney general shall be elected for a term of four years at the state general election. The assistant attorney general shall be appointed by the attorney general to serve at his pleasure.

(B) As may be necessary for the assertion or protection of any right or interest of the state, the attorney general shall have the authority to

(1) to institute, prosecute, or intervene in any civil action or proceedings;

(2) upon the written request of a district attorney, to advise and assist in the prosecution of any criminal case;

(3) for cause, when authorized by the court which would have original jurisdiction and subject to judicial review.

(a) to institute, prosecute, or intervene in any criminal action of proceeding, or

(b) to supersede any attorney representing the state in any civil or criminal action.

(C) The attorney general shall exercise such other powers and performs such other duties as may be authorized by this constitution or by law."

Explanation

MR. BURSON

Mr. Chairman and fellow delegates, I again direct your attention to Article VII, Section 56 of the old constitution and Section 26 of Committee Proposal No. 21, the Judiciary Article. If you will look at these, and first of all looking at Section 26 in this amendment, you will find that the relevant change in this amendment is not in....(B)(1) remains the same, that is, the power to institute, prosecute, or intervene in any civil action or proceeding. (B)(2) remains the same, that is, upon the written request it says "written request", the other one simply said "request of a district attorney to advise and assist in the prosecution of any criminal case." The change comes in Section 3. Now, you will recall that I was very vociferous among other people in opposing any original criminal jurisdiction for the attorney general on the thesis that this was the responsibility of the locally elected district attorney. However, on examination of this issue in the spirit of trying to compromise here and reach a solution—which I frankly confess to you like most compromises will not totally satisfy either the district attorneys or the attorney general because the attorney general would like the discretion to bring a criminal prosecution whenever, it's necessary in his judgment, whereas the D.A.'s would probably be just as happy for him not to have any such jurisdiction. The D.A.'s, at least, have agreed that in the spirit of compromise it would be proper "for cause, when authorized by the court which would have original jurisdiction subject to judicial review" as ws suggested in the original Judiciary Committee Proposal for the attorney general (a)—and here if you refer to Section 56 of Article VII of the old constitution you will find that (3) (a) of this amendment is.... the language is taken from that language "to institute, prosecute, or intervene in any criminal action or proceeding"—that it is clear by this amendment that the attorney general would have, if he went to court and showed cause for doing so, the power to institute a proceeding. But it is subject to the same necessity of showing for cause as was in the original Judiciary Committee Proposal which was somewhat ambiguous when it talked about a proceeding or affidavit because an affidavit, of course, is how you normally institute a criminal proceeding anyway. But, this language clarifies and makes it clear that under the terms and conditions set out

in this amendment the attorney general would, in that instance, be able to exercise original criminal jurisdiction and that is the change.

[Notion to suspend the rules to reconsider Committee Proposal No. 4, Section 8 for the limits purpose of offering an amendment adopted without objection.]

Committee Proposal No. 4
Reconsideration
Explanation

MR. BURSON

Only this: It seems to me at this stage of the convention to try to be reasonable and to compromise our more extreme positions. I took the extreme position that he ought not to have any original criminal jurisdiction. This would permit him if the attorney general can go into court and show cause because the district attorney, for whatever reason, has not done his duty in a particular case and can come in and exercise original criminal jurisdiction. Otherwise, of course, he cannot and I know this won't satisfy him; that's why its a compromise. I'll answer any questions.

[*Previous question ordered. Amendment adopted: 104-5. Motion to reconsider tabled. Previous question ordered on the Section. Section passed: 102-7. Motion to reconsider tabled. Previous Question ordered on the Proposal. Proposal passed: 105-4. Motion to reconsider pending. Motion to recommit the proposal to the Committee on Style and Drafting adopted without objection. Motion to suspend the rules to call Committee Proposal No. 21 from the Committee on Style and Drafting.*]

Point of Information

MR. DENNIS

I would like to ask the Chair or Mr. Burson the specific purpose for which this thing...

MR. HENRY

It's to go ahead and clean up this attorney general's business just to delete what's already in there and make it conform with the executive.

MR. DENNIS

Limited to that purpose?

MR. HENRY

That's what the final motion is going to be, Judge.

[*Motion adopted without objection. Motion to reconsider Committee Proposal No. 21.*]

Point of Information

MR. DENNIS

Mr. Chairman, is this the point at which we're going to say exactly why the vote is going to be reconsidered?

MR. HENRY

Well, you know, I've already said why, but it's not the point that the motion is made for the specific purpose and all that business. But that motion is going to be made. I'm not going to recognize anyone in order to do otherwise, Judge.

MR. DENNIS

All right, sir.

[*Motion to reconsider Committee Proposal No. 21 adopted without objection. Motion to suspend the rules to reconsider Section 25 for the limited purpose of offering an amendment.*]

Amendment

MR. HARDIN

The amendment to Section 25, Amendment No.1

On page 8, delete lines 24 through 30, both inclusive in their entirety which constitutes the entire section, and renumber the succeeding sections in conformity therewith.

Questions

MR. AVANT

The overall effect of what you would have accomplished if you go to this third step, as I understand it, would delete any reference to the attorney general in the Judiciary Article. To put him in the Executive Article and make him subject...they have been amended here this afternoon, which in effect says he can be reorganized, but his constitutional powers would not be disturbed. Is that the net result of all of this?

MR. BURSON

Yes, sir. The powers, functions, duties of his office, as allocated by this constitution, cannot be diminished or affected in any way.

MR. AVANT

But, is it not true that if the office of attorney general is subject to reorganization at all, that it would be then subject to pressures, or possible pressures, because of proposed legislation which would affect other aspects of his operation other than simply in the area of his constitutional duties which may in turn have an effect on the performance of his duties and his independent status?

MR. BURSON

Mr. Avant, if I thought that he would be susceptible to any more pressure than he would be now, let's say by cutting his budget, which certainly would be the greatest pressure of all, which could be done under either scheme by the legislature, then I would not have proposed this. That was the reason why that first sentence was out in there. I think we've been specific enough in the grant of power to him, saying that he's the state's chief legal officer, that he has the power to hire his assistants, that as required to assert...to protect the right or interest of the state that he can do all these various and sundry things plus whatever else is prescribed by law, and that he's the head of the Department of Justice which we've also said, that we've made it very plain with that first sentence and with the reservation and the reorganization section that he couldn't be gutted or gerrymandered out of power. In fact, I think it would be a lot more difficult to do it since we added this section than it might have been if we hadn't.

MR. SINGLETARY

Mr. Burson, I don't have a copy. I believe your amendment goes to the first enrollment, right?

MR. BURSON

That's correct. Yes, sir.

MR. SINGLETARY

I'm trying to get a copy of the first enrollment, but what you're doing, I believe, is deleting not only Section 25 but also Section 26, is that right?

MR. BURSON

That's correct. In other words, the amendment that we just adopted acts out in much greater detail, I think, the powers of the attorney general than the original proposal did.

MR. DE BLIEUX

Mr. Burson, the amendment that we just previously adopted, didn't we put the attorney general in the Executive Department by adopting that amendment?

MR. BURSON

That's correct, sir.

MR. DE BLIEUX

Now, if we don't adopt this amendment won't we have the attorney general in both the Executive and the Department of Justice...the Branch of Justice?

MR. BURSON

Yes, Sir, Senator.

MR. DE BLIEUX

So, then it's necessary that we eliminate one of these, isn't that correct?

MR. BURSON

Yes, Sir, that's correct.

MRS. WARREN

Mr. Burson, could you tell me why it's so important to have him in the Executive instead of the Judiciary Branch?

MR. BURSON

Mrs. Warren, I'll be frank to say it wasn't that important to me at all. I'm simply trying at this late stage of the convention to

participate in resolving some conflicts that we've had since the beginning. I guess, since I was responsible for creating part of the conflict maybe that's why I was asked to present this particular measure. I don't mind because I feel that with this safeguard that we've put in here in the first part of the amendment, that the major objection that I personally had to moving the attorney general from the Judiciary Article has been fully taken care of...been taken care of as far as I'm concerned and the other people who got up to the mike here and expressed the concern in the original debate that we had on this question.

MRS. WARREN

Mr. Stagg is interrupting me ... but I would still like to know from whomever that is wanting...you know wanted him in one Brance or the other so bad, I'd like to know the difference; I really would.

MR. BURSON

Well Mrs. Warren, this has been going on since the convention began. The Executive Committee said he ought to be part of the Executive Branch because he is part of the Executive Brance in the national government and in all other state governments we know about, and the Judiciary Committee said, "Well, that may be true, but he's always been in the Judiciary Branch in our constitution and we think he ought to stay there because he might be subject to executive influence otherwise." I feel that we have...by the caveat that we've put in here, by the specific reservation against affecting or diminishing any of his constitutional power, we've taken care of that because under the old constitution, if you look at Article VII, Section 56, there's very, very little set out in the old constitution about the attorney general's power; the rest is all by statute anyway. So, actually we have set out much more specifically in this constitutional provision the attorney general's power than is done under the old Section 56. I don't think that there's any question about that.

[*Motion to suspend the rules adopted without objection. Motion to reconsider Committee Proposal No. 21, Section 25 adopted without objection.*]

Reconsideration
Explanation

MR. BURSON

I think I've already explained it. Section 25 of the Judiciary Proposal simply said that "there shall be a Department Justice consisting of an attorney general and his assistants." The amendment we've just adopted says that, also. Section 25 said that "the attorney general shall be elected for a term of four years at the state general election, that he shall appoint assistants to serve at his pleasure," and the amendment we just adopted says all of that. So, the sum and substance of what Section 25 says is in the new Section 8 of the Executive Department Proposal that we have adopted. I, therefore, urge your adoption of this amendment to delete it from the Judiciary Proposal.

[Amendment adopted without objection. Previous Question ordered on the Section. Section deleted: 102-2. Motion to suspend the rules to reconsider Committee Proposal No. 21, Section 26.]

Amendment

MR. HARDIN

Amendment No. 1. On page 8, delete lines 31 through 34, both inclusive, in their entirety, and on page 9, delete lines 1 through 10 both inclusive, in their entirety, and renumber the succeeding sections in conformity therewith.

[Motion to suspend the rules adopted without objection. Motion to reconsider Section 26 adopted without objection.]

Reconsideration

Explanation

MR. BURSON

I would point out to you again that we are here removing from the Judiciary Article the powers and duties which we have already inserted in the Executive Article. The reason we did it that way is because those of us who felt strongly about it wanted to be sure that before we took him out of Judiciary that the duties, powers, and functions of the attorney general as elaborated herein were fully protected from any allocation or reallocation by the first sentence of the amendment that we adopted. But, if you will look at the powers such as they are set out in Section 26, you will see that they say that the attorney general shall be the chief legal officer of the state; we've said that in the amendment that we previously adopted. It goes on to

set out what the attorney general may do and we have said each and every one of those things plus more in the amendment that we have adopted. So, for those reasons, I urge your adoption of the amendment to delete the powers from the Judiciary Article.

[*Amendment adopted without objection. Previous Question ordered on the Proposal. Proposal passed: 105-2. Motion to reconsider pending.*]

Personal Privilege

MR. VICK

Mr. Chairman and fellow delegates, I rise not because I am aggrieved necessarily, because the the vote was overwhelming to do what you wanted to do, but I rise to remind you that this battle is not over. On tomorrow, my alternate presumably will be debated according to the rules of this convention and that alternate very simply is to leave the question to the people whether they want a strong attorney general or a weak one. The strong attorney general by the Constitution of '21, Article VII, Section 56, as delineated, as opposed to the current proposal or even the updated proposal is set forth in a letter from Dean Francis Sullivan of the L.S.U. School of Law to the attorney general, dated November the 14th which accompanies a memorandum sent to you by the attorney general himself. Now, ladies and gentlemen, this is perhaps by some standards one of the most critical issues before the convention. This office, as oppose to any other in this constitution on a statewide basis, has had its powers severely diminished. That is the power to initiate original criminal jurisdiction or to initiate original criminal prosecution. The erosion on the part of the Judiciary Committee and others to move the office, the duties, powers and functions to the Executive is again reflected by your vote. We went through this once before; the vote was so indicate of your mood on that subject that there was no need to dispute it. But, I urge you, ladies and gentlemen, I implore you, to read the letter from Dean Sullivan because I am going to be referring to it in detail tomorrow when we debate the alternate, and the issue then will be very simple; let the people decide whether they want a strong attorney general or a weak one. Until tomorrow, thank you.

[*Motion to suspend the rules to call Committee Proposal No. 26 from the Committee on Style and Drafting adopted: 85-20.*

Motion to reconsider Committee Proposal No. 26 adopted: 73-22. Motion to suspend the rules to reconsider Committee Proposal No. 26, Section 4 for the limited purpose of considering the Graham amendment.]

Reconsideration

Committee Proposal No. 26, Section 4

LOUISIANA CONSTITUTION
ARTICLE IV. EXECUTIVE BRANCH

§ 5. Governor; Powers and Duties

Section 5. (A) Executive Authority. The governor shall be the chief executive officer of the state. He shall faithfully support the constitution and laws of the state and of the United States and shall see that the laws are faithfully executed.

(B) Legislative Reports and Recommendations. The governor shall, at the beginning of each regular session, and may, at other times, make reports and recommendations and give information to the legislature concerning the affairs of state, including its complete financial condition.

(C) Departmental Reports and Information. When requested by the governor, a department head shall provide him with reports and information, in writing or otherwise, on any subject relating to the department, except matters concerning investigations of the governor's office.

(D) Operating and Capital Budget. The governor shall submit to the legislature an operating budget and a capital budget, as provided by Article VII, Section 11 of this constitution.

(E) Pardon, Commutation, Reprieve, and Remission; Board of Pardons.

(1) The governor may grant reprieves to persons convicted of offenses against the state and, upon recommendation of the Board of Pardons, may commute sentences, pardon those convicted of offenses against the state, and remit fines and forfeitures imposed for such offenses. However, a first offender never previously convicted of a felony shall be pardoned automatically upon completion of his sentence, without a recommendation of the Board of Pardons and without action by the governor.

(2) The Board of Pardons shall consist of five electors appointed by the governor, subject to confirmation by the Senate. Each member of the board shall serve a term concurrent with that of the governor appointing him.

(F) Receipt of Bills from the Legislature. The date and hour when a bill finally passed by the legislature is delivered to the governor shall be endorsed thereon.

(G) Item Veto.

(1) Except as otherwise provided by this constitution, the governor may veto any line item in an appropriation bill. Any item vetoed shall be void unless the veto is overriden as prescribed for the passage of a bill over a veto.

LOUISIANA CONSTITUTION
ARTICLE IV. EXECUTIVE BRANCH

§ 1 Composition; Number of Departments; Reorganization

Section 1. (A) Composition. The executive branch shall consist of the governor, lieutenant governor, secretary of state, attorney general, treasurer commissioner of agriculture, commissioner of insurance, superintendent of education, commissioner of elections, and all other executives offices, agencies, and instrumentalities of the state.

(B) Number of Departments. Except for the offices of governor and lieutenant governor, all offices, agencies, and other instrumentalities of the executive branch and their functions, powers, duties, and responsibilities shall be allocated according to function within not more than twenty departments. The powers, functions, and duties allocated by this constitution to any executive office or commission shall not be affected or diminished by the allocation provided herein except as authorized by Section 20 of this Article.

(C) Reorganization. Reallocation of the functions, powers, and duties of all

State of Louisiana

Department of Justice

William J. Guste, Jr.
Attorney General

7th Floor
2-3-4 Loyola Building
New Orleans 70112-2056

August 11, 1989

Mr. John N. Kennedy
Special Counsel to the Governor
c/o Governor's Office
State Capital
Baton Rouge, Louisiana 70804

Re: United States of America v. Louisiana United States District Court for the Eastern District of Louisiana Civil Action #80-3300

Dear John:

You have done an outstanding job in assisting in the representation of the State of Louisiana in this most important suit involving higher education.

You may be sure that this work is appreciated by everyone.

As you know, in the latter part of last year, you signed on our brief as Special Counsel to the Governor, and I filed motions having you entered as Counsel of Record in the case. On your request, we also filed motions entering as Counsel of Record Joseph J. Levin and Carla Calobrisi.

We have reached a point in the case where it is important that we do not have confusion with regard to the representation of the State of Louisiana. I am most happy to have you continue as Attorney of Record in these proceedings with the understanding that you may file such pleadings as you or Mr. Levin or Ms. Calobrisi see fit on behalf of the Governor as amicus or otherwise. It should be noted that the Governor is not a party to the suit.

However, the Attorney General and only the Attorney General will file pleadings on behalf of the State of Louisiana as its official legal spokesman.

John, we want to work together as much as possible on this, and I look forward to doing so. This case is of monumental importance to

the State and its people, and I know that everything you have done has been done by you with the intent to do what is best for the State.

As I see my duty, it is to support the Constitution of the State and to defend the State against liability in this case until the Constitution has been changed by a judgment of the U.S. Supreme Court or by a vote of the people. I also think it important to prevent the unnecessary merger of LSU and Southern University Law Schools.

I hope that understanding these parameters, we may continue to work together in the best interest of the State.

Yours very truly,

/s/ William J. Guste, Jr.

William J. Guste, Jr.
Attorney General

WJG,Jr/sl
CC: Honorable Buddy Roemer
Mr. Joseph J. Levin
Ms. Carla Calobrisi

State of Louisiana

Department of Justice

William J. Guste, Jr.
Attorney General

7th Floor
2-3-4 Loyola Building
New Orleans 70112-2056

August 11, 1989

Mr. Joseph J. Levin
Ms. Carla Calobrisi
200 M Street, N.W.
Washington, D.C. 20036-3307

Re: United States of America v. Louisiana United States District Court for the Eastern District of Louisiana
Civil Action #80-3300

Dear Mr. Levin and Ms. Calobrisi:

Please see the attached letter which I have addressed this day to John Kennedy, Special Counsel to the Governor.

You may be sure that the State is grateful to you for the role you have played in the above referred to suit.

As I pointed out in my letter to Mr. Kennedy, it is imperative that we not have confusion in who represents the State of Louisiana at this point.

I am most happy to have you continue as Attorneys of Record in these proceedings with the understanding that you may file such pleadings as you see fit on behalf of the Governor as amicus or otherwise. It should be noted that the Governor is not a party to the suit.

However, the Attorney General and only the Attorney General will file pleadings on behalf of the State of Louisiana as its official legal spokesman.

Yours very truly,
/s/ William J. Guste, Jr.
William J. Guste, Jr.

WJG,Jr./sl
Enclosure

MODEL RULES OF PROFESSIONAL CONDUCT

American Bar Association

RULE 1.7 CONFLICT OF INTEREST: GENERAL RULE

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

Comment

Loyalty to a Client

Loyalty is an essential element in the lawyer's relationship to a client. An impermissible conflict of interest may exist before representation is undertaken, in which event the representation should be declined. If such a conflict arises after representation has been undertaken, the lawyer should withdraw from the representation. See Rule 1.16. Where more than one client is involved and the lawyer withdraws because a conflict arises after representation, whether the lawyer may continue to represent any of the clients is determined by Rule 1.9. See also Rule 2.2(c). As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3 and Scope.

As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client without that client's

consent. Paragraph (a) expresses that general rule. Thus, a lawyer ordinarily may not act as advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only generally adverse, such as competing economic enterprises, does not require consent of the respective clients. Paragraph (a) applies only when the representation of one client would be directly adverse to the other.

Loyalty to a client is also impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. Paragraph (b) addresses such situations. A possible conflict does not itself preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. Consideration should be given to whether the client wishes to accommodate the other interest involved.

Consultation and Consent

A client may consent to representation notwithstanding a conflict. However, as indicated in paragraph (a)(1) with respect to representation directly adverse to a client, and paragraph (b)(1) with respect to material limitations on representation of a client, when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When more than one client is involved, the question of conflict must be resolved as to each client. Moreover, there may be circumstances where it is impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent.

Lawyer's Interests

The lawyer's own interests should not be permitted to have adverse effect on representation of a client. For example, a lawyer's need for income should not lead the lawyer to undertake matters that cannot be handled competently and at a reasonable fee. See Rules 1.1 and 1.5. If the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. A lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed interest.

RULE 1.9 CONFLICT OF INTEREST: FORMER CLIENT

A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation; or

(b) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 would permit with respect to a client or when the information has become generally known.

Comment

After termination of a client-lawyer relationship, a lawyer may not represent another client expect in conformity with this Rule. The principles in Rule 1.7 determine whether the interests of the present and former clients are adverse. Thus, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction.

The scope of a "matter" for purposes of paragraph (a) may depend on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests clearly is prohibited. On the other hand, a lawyer who

recurrently handled a type of problem for a former client is not precluded from later representing another client in a wholly distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdiction. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

Information acquired by the lawyer in the course of representing a client may not subsequently be used by the lawyer to the disadvantage of the client. However, the fact that a lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client.

Disqualification from subsequent representation is for the protection of clients and can be waived by them. A waiver is effective only if there is disclosure of the circumstances, including the lawyer's intended role in behalf of the new client.

With regard to an opposing party's raising a question of conflict of interest, see Comment to Rule 1.7. With regard to disqualification of a firm with which a lawyer is associated, see Rule 1.10.

ARTICLE XVI. RULES OF PROFESSIONAL CONDUCT

Adopted December 18, 1986
Effective January 1, 1987

The Rules of Professional Conduct replace the former Code of Professional Responsibility, effective January 1, 1987.

CLIENT-LAWYER RELATIONSHIP

Rule 1.7. Conflict of interest: General rule

Loyalty is an essential element in the lawyer's relationship to a client. Therefore:

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) The lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) Each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) The lawyer reasonably believes the representation will not be adversely affected, and

(2) The client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implication of the common representation and the advantages and risks involved.

Rule 1.9 Conflict of interest: Former client

A lawyer who has formerly represented a client in a matter shall not thereafter;

(a) Represent another person in the same or substantially related matter in which that person's interests are materially adverse to the

interests of the former client unless the former client consents after consultation; or

(b) Use information relating to the representation to the disadvantage of the former client except as Rule 1.6 would permit with respect to a client or when the information has become generally known.

The California State Bar Act
Rules of Professional Conduct

Pub. No. 250-101-3610 (3e) **January 1989**

Rule 5-102. Avoiding the Representation of Adverse Interests.

(A) Amember of the State Bar shall not accept professional employment without first disclosing his relation, if any , with the adverse party , and his interest, if any, in the subject matter of the employment. Amember of the State Bar Who accepts employment under this rule shall first obtain the client's written consent to such employment.

(B) A member of the State Bar shall not represent conflicting interests, except with written consent of all parties concerned.

MCGLINCHEY, STAFFORD, MINTZ, CELLINI & LANG, PC

November 7, 1989

VIA FEDERAL EXPRESS

The Honorable William Lynch
Office of State Inspector General
900 Riverside Mall
Capitol Annex Building
Room 152
Baton Rouge, Louisiana 70802

RE: United States of America vs. State of Louisiana, Louisiana State Board of Education, et al.

Dear Mr. Lynch:

I enclose copies of the two affidavits which I previously sent to the Ethics Commission indicating that this firm has received no payment in connection with legal services performed in the above matter. Accordingly, there could be no violation even if it were determined that suppliers of professional services were "public servants" because nothing of value has been exchanged. Nevertheless, our firm does not wish to continue with this case and I now want to advise you that we are no longer providing professional services to the Attorney General.

I hope that this letter sufficiently clarifies our situation. I also want to assure you of our full cooperation with your office at all times.

Very truly yours,

/s/ Dermot S. McGlinchey

Dermot S. McGlinchey

DSM/jrb
Enclosures

STATE OF LOUISIANA

PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared:

DERMOT S. MCGLINCHEY

who, being duly sworn, did depose and say:

That neither he nor any member of the law firm of McGlinchey, Stafford, Mintz, Cellini and Lang or its associates have been paid for research work and counselling done in connection with the case of STATE OF LOUISIANA, EX REL, WILLIAM J. GUSTE, JR., ATTORNEY GENERAL OF LOUISIANA V. UNITED STATES OF AMERICA, #89-387, OCTOBER 1989 Term of the U.S. Supreme Court, nor have they submitted a statement for services to any person or entity.

/s/ DERMOT S. MCGLINCHEY

DERMOT S. MCGLINCHEY

Sworn to and subscribed before me,
this 27th day of October, 1989.

NOTARY PUBLIC

SUPPLEMENTAL AFFIDAVIT

STATE OF LOUISIANA

PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared:

DERMOT S. MCGLINCHEY

who, being duly sworn, did depose and say:

That the law firm of McGlinchey, Stafford, Mintz, Cellini and Lang will accept no compensation for services rendered in connection with the case of STATE OF LOUISIANA, EX REL, WILLIAM J. GUSTE, JR., ATTORNEY GENERAL OF LOUISIANA V. UNITED STATES OF AMERICA, #89-387, OCTOBER 1989 Term of the U.S. Supreme Court unless authorized by an advisory opinion from the State Commission on Ethics for Public Employees requested by William J. Guste, Jr., Attorney General of the State of Louisiana.

/s/ DERMOT S. MCGLINCHEY

DERMOT S. MCGLINCHEY

Sworn to and subscribed before me,
this 31st day of October, 1989.

NOTARY PUBLIC

COMMISSION ON ETHICS FOR PUBLIC EMPLOYEES

MINUTES

October 26-27, 1989

The Commission on Ethics for Public Employees met October 26, 1989 at 4:45 p.m. in the Contractors' Licensing Board Room, 7434 Perkins Road, Baton Rouge, Louisiana, with Commissioners Snyder, Bussie, Barham, Lacour and Goss present. Also present were the Executive Secretary, Gray Sexton; Counsel, Peter Wright and Maria McCrory; Secretary, JoAnn Johnson.

The Commission considered a staff report in Docket No. 89-240 in connection with a request for an advisory opinion from the State Inspector General, Bill Lynch, as to the propriety of the Attorney General employing private counsel whose fees will be paid by a third party to assist the Attorney General in connection with the college desegregation case. On motion made and passed, the Commission agreed to consider the request for an advisory opinion as a supplemental request in general business.

CHAPTER 15. CODE OF GOVERNMENTAL ETHICS

Chapter 15, formerly consisting of R.S. 42:1101 to R.S. 42:1148 as set out in the main volume and amended ante, has been amended and reenacted by Acts 1979, No. 443, 1, effective April 1, 1980, to consist of R.S. 42:1101 to 42:1169 as set out below.

PART I. GENERAL PROVISIONS

§ 1101. Declaration of policy

A. Whereas the people of the state of Louisiana have in Article X, Section 21 of the Louisiana Constitution mandated that the legislature enact a code of ethics for officials and employees of this state and its political subdivisions, the legislature does hereby enact a Code of Governmental Ethics.

B. It is essential to the proper operation of democratic government that elected officials and public employees be independent and impartial; that governmental decisions and policy be made in the proper channel of the governmental structure; that public office and employment not be used for private gain other than the remuneration provided by law; and that there be public confidence in the integrity of government. The private interests of an elected official or a public employee and his duties as such. The public interest, therefore, requires that the law protect against such conflicts of interest and that it establish appropriate ethical standards with respect to the conduct of elected officials and public employees without creating unnecessary barriers to public service. It is the purpose of this Chapter to implement these policies and objectives.

Acts 1979, No. 443, § 1, eff. April 1, 1980

1102. Definitions

Unless the context clearly indicates otherwise, the following words and terms, when used in this Chapter, shall have the following meanings:

(1) "Action of a governmental entity" means any action on the part of a governmental entity or agency thereof including, but not limited to:

(a) Any decision, determination, finding, ruling, or order, including judgment or verdict of a court or a quasi-judicial board, in which the governmental entity or any of its agencies has an interest, except in such matters involving criminal prosecutions.

(b) Any grant, payment, award, license, contract, transaction, decision, sanction, or approval, or the denial thereof, or the failure to act with respect thereto; and in which the governmental entity or any of its agencies has an interest, except in matters involving criminal prosecutions.

(c) As the term relates to a public servant of the state, any disposition of any matter by the legislature or any committee thereof; and as the term relates to a public servant of a political subdivision, any disposition of any matter by the governing authority or any committee thereof.

(2) "Agency" means a department, office, division, agency, commission, board, committee, or other organizational unit of a governmental entity. For purpose of this Chapter, "agency of the public servant" and "his agency" when used in reference to the agency of a public servant shall mean:

(a) For public servants in the twenty principal departments of the executive branch of state government, the office in which such public servant carries out his primary responsibilities; except that in the case of the secretary, deputy secretary, or undersecretary of any such department and officials carrying our the responsibilities of such department officers it shall mean the department in which he serves; and except that in the case of public servants who are members or employees of a board or commission or who provide staff assistance to a board or commission, it shall mean the board or commission.

(b) For the governor and lieutenant governor, it shall mean the executive branch of state government.

(c) For public servants in the office of the governor or the lieutenant governor it shall mean their respective offices.

(d) For public servants in the legislative branch of state government, it shall mean the agency or house of the legislature by which a public employee is employed and the legislative branch in the case of legislators.

(e) For public employees, except judges, of the supreme court, courts of appeal, district courts, and other courts authorized by Article V of the Constitution of 1974, it shall mean the court in which the public employee serves and any other court in which decisions of that court may be reviewed.

(f) For public servants of political subdivisions, it shall mean the agency in which the public servant serves, except that for members of any governing authority and for the elected or appointed chief executive of a governmental entity, it shall mean the governmental entity. Public servants of political subdivisions shall include, but shall not be limited to, elected officials and public employees of municipalities, parishes, and other political subdivisions; sheriffs and their employees; district attorneys and their employees; coroners and their employees; and clerks of court and their employees.

The ethics body may adopt rules and regulations to provide for the application of this definition.

(3) "Agency head" means the chief executive or administrative officer of an agency or any member of a board or commission who exercises supervision over the agency.

(4) "Assist" means to act in such a way as to help, advise, furnish information to, or aid a person with the intent to assist such person.

(5) "Board" means the Board of Ethics for Elected Officials.

(6) "Commission" mens the Commission on Ethics for Public Employees.

(7) "Compensation" means any thing of economic value which is paid, loaned, granted, given, donated, or transferred or to be paid, loaned, granted, given, donated, or transferred for or in consideration of personal services to any person.

(8) "Controlling interest" means ownership by an individual or his spouse, either individually or collectively, of an interest which exceed twenty-five percent of any legal entity

(9) "Elected official" means any person holding an office in a governmental entity which is filled by the vote of the appropriate electorate. It shall also include any person appointed to fill a vacancy in such offices.

(10) "Ethics body" means the board or commission.

(11) "Governing authority" means the body which exercises the legislative functions of a political subdivision.

(12) "Governmental entity" means the state or any political subdivision which employs the public employee or employed the former public employee or to which the elected official is elected, as the case may be.

(13) "Immediate family" as the term relates to a public servant means his children, brothers, sisters, parents, spouse, and the parents of his spouse.

(14) "Legislator" means any person holding office in the Senate or the House of Representatives of the Louisiana Legislature which is filled by the vote of the appropriate electorate.

(15) "Participate" means to take part in or to have or share responsibility for action of a governmental entity or a proceeding, personally, as a public servant of the governmental entity, through approval, disapproval, decision, recommendation, the rendering of advice, investigation, or the failure to act or perform a duty.

(16) "Person" means an individual or legal entity other than a governmental entity, or an agency thereof.

(17) "Political subdivision" means any unit of local government, including a special district, authorized by law to perform governmental functions.

(18) "Public employee" means anyone whether compensated or not, who is:

(a) An administrative officer or official of a governmental entity who is not filling an elective office.

(b) Appointed by any elected official when acting in an official capacity, and the appointment is to a post or position wherein the appointee is to serve the governmental entity or an agency thereof, either as a member of an agency, or as an employee thereof.

(c) Engaged in the performance of a governmental function.

(d) Under the supervision or authority of an elected official or another employee of the governmental entity.

A public employee shall be in such status on days on which he performs no services as well as days on which her performs services. The termination of any particular term of employment of a public employee shall take effect on the day the termination is clearly evidenced.

(19) "Public servant" means a public employee or an elected official.

20) "Responsibility" in connection with a transaction involving a governmental entity means the direct administration or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through or with others or subordinates, to effectively direct action of the governmental entity, as the case may be, in respect to such transaction.

(21) "Substantial economic interest" means an economic interest which is of greater benefit to the public servant or other person than to a general class of group of persons, except:

(a) The interest that the public servant has in his position, office, rank, salary, per diem, or other matter arising solely from his public employment or office.

(b) The interest that a person has as a member of the general public.

(22)(a) "Thing or economic value" means money or any other thing having economic value, except promotional items having no substantial resale value; food, drink, or refreshments consumed by a public servant, including reasonable transportation and entertainment incidental thereto, while the personal guest of some person, and, with reference to legislators only, reasonable transportation when organized primarily for educational or informational purposes, including food and drink incidental thereto, and includes, but is not limited to:

(i) ny loan, except a bona fide loan made by a duly licensed lending institution at the normal rate of interest, any property interest, interest in a contract, merchandise, service, and any employment or other arrangement involving a right to compensation.

(ii) Any option to obtain a thing of economic value, irrespective of the conditions to the exercise of such option.

(iii) Any promise or undertaking for the present or future delivery or procurement of a thing of economic value.

(b) In the case of an option, promise, or undertaking, the time of receipt of the thing of economic value shall be deemed to be, respectively, the time the right to the option becomes fixed, regardless of the conditions to its exercise, and the time when the promise or undertaking is made, regardless of the conditions to its performance.

(c) Things of economic value shall not include salary and related benefits of the public employee due to his public employment or salary and other emoluments of the office held by the elected official. Salary and related benefits of public employees of higher education institutions, boards, or systems shall include any supplementary compensation use of property, or other benefits provided to such employees from funds or property accruing to the benefit of the institution, board, or system, as approved by the appropriate policy or management board, from an alumni organization recognized by the management board of a college or university within the state or from a foundation organized by the alumni or other supportive individuals of a college or university within the state the charter of which specifically provides that the purpose of the foundation is to aid said college or university in a philanthropic manner.

(d) With reference to legislators only, and for purposes of this Section, "reasonable transportation," when organized primarily for educational or for informational purposes, including on-site inspections, shall include transportation to any point within the boundaries of this state, including the territorial waters thereof, and to any offshore structure located on the outer continental shelf seaward of such territorial waters and offshore of Louisiana. "Reasonable transportation," when organized primarily for entertainment purposes incidental to food, drink, or refreshments, shall include transportation to any point within this state that is within a fifty-mile radius of the perimeter of the legislator's district, or within a fifty-mile radius of the perimeter of the parish whereas the state capitol is located if the legislator is conducting official business in said parish.

(23) "Transaction involving the governmental entity" means any proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other such particular matter

which the public servant or former public servant of the governmental entity in question knows or should know:

(a) Is, or will be, the subject of action by the governmental entity.

(b) Is one to which the governmental entity is or will be a party.

(c) Is one in which the governmental entity has a direct interest. A transaction involving the agency of a governmental entity shall have the same meaning with respect to the agency.

(24) "Service" means the performance of work, duties, or responsibilities, or the leasing, rental, or sale of movable or immovable property.

Acts 1979, No. 443, § 1, eff. April 1, 1980. Amended by Acts 1980, No. 838 § 1; Acts 1083, No. 403, § 1; Acts 1985, No. 491, § 1; Acts 1986, No. 359, § 1; Acts 1988, No. 144, § § 1.

PART II. ETHICAL STANDARDS FOR PUBLIC SERVANTS

§ 1111. Payment from nonpublic sources

A. Payments for services to the governmental entity. No public servant shall receive any thing of economic value, other than compensation and benefits from the governmental entity to which he is duly entitled, for the performance of the duties and responsibilities of his office or position; however, supplementary compensation or benefits provided to an employee of a public higher education institution, board, or system from funds or property accruing to the benefit of the institution, board, or system, as approved by the appropriate policy or management board, through an alumni organization recognized by the management board of a college or university within the state or through a foundation organized by the alumni or other supportive individuals of a college or university within the state the charter of which specifically provides that the purpose of the foundation is to aid said college or university in a philanthropic manner shall be deemed for purposes of this Subsection as compensation and benefits from the government to which he is duly entitled.

B. Finder's fees. No public servant shall receive any thing of economic value from a person to whom the public servant has directed business of the governmental entity.

C. Payments for nonpublic service.

(1) No public servant shall receive any thing of economic value for any service, the subject matter of which:

(a) Is devoted substantially to the responsibilities, programs, or operations of the agency of the public servant and in which the public servant has participated; or

(b) Draws substantially upon official data or ideas which have not become part of the body of public information.

(2) No public servant and no legal entity in which the public servant exercises control or owns an interest in excess of twenty-five percent, shall receive any thing of economic value for or in consideration of services rendered, or to be rendered, to or for any person during his public service unless such services are:

(a) Bona fide and actually performed by the public servant or by the entity;

(b) Not within the course of his official duties;

(c) Not prohibited by R.S. 42:1112 or by applicable laws or regulations governing nonpublic employment for such public servant; and

(d) Neither performed for nor compensated by any person from whom such public servant would be prohibited by R.S. 42:1115(A)(1) or (B) from receiving a gift.

D. Payments for future services. No public servant shall receive, directly or indirectly, any thing of economic value during the term of his public service in consideration of personal services to be rendered to or for any person subsequent to the term of such public service; however, a public servant may enter into a contract for prospective employment during the term of his public service unless otherwise prohibited by R.S. 42:1116.

E. Payments for rendering assistance to certain persons.

(1) No public servant, and no legal entity of which such public servant is an officer, director, trustee, partner, or employee, or in which such public servant has a substantial economic interest, shall receive or agree to receive any thing of economic value for assisting a person

in a transaction, or in an appearance in connection with a transaction, with the agency of such public servant.

(2)(a) No elected official of a governmental entity shall receive or agree to receive any thing of economic value for assisting a person in a transaction or in an appearance in connection with a transaction with the governmental entity or its officials or agencies unless he shall file a sworn written statement with the board prior to or least ten days after initial assistance is rendered.

(b) The contents of the sworn written statement required by this Subsection shall be prescribed by the board and such statement shall be a public record.

(c) The board shall review all sworn statements filed in accordance with this Subsection. If the board determines that any such sworn statement is deficient or may suggest a possible violation of this Part, it shall within ten days of the receipt of such statement, notify the elected official filing the statement of its findings. Such notification shall be deemed confidential and privileged and shall only be made public in connection with a public hearing by the board for an alleged violation of this Part, where such would be relevant to the alleged violation for which the elected official is being investigated.

Acts 1979, No. 443, § 1, eff. April 1, 1980. Amended by Acts 1988, No. 403, § 1; Acts 1988, No. 697, § 1; Acts 1986, No. 359, § 1.

§ 1112. Participation in certain transactions involving the governmental entity

A. No public servant, except as provided in R.S. 42:1120, shall participate in a transaction in which he has a personal substantial economic interest of which he may be reasonably expected to know involving the governmental entity.

B. No public servant, except as provided in R.S. 42:1120, shall participate in a transaction involving the governmental entity in which, to his actual knowledge, any of the following persons has a substantial economic interest:

(1) Any member of his immediate family.

(2) Any person in which he has a substantial economic interest of which he may reasonably be expected to know.

(3) Any person of which he is an officer, director, trustee, partner, or employee.

(4) Any person with whom he is negotiating or has an arrangement concerning prospective employment.

(5) Any person who is a party to an existing contract with such public servant, or with any legal entity in which the public servant exercises control or owns an interest in excess of twenty-five percent, or who owes any thing of economic value to such public servant, or to any legal entity in which the public servant exercises control or owns an interest in excess of twenty-five percent, and who by reason thereof is in a position to affect directly the economic interests of such public servant.

C. Every public employee, excluding an appointed member of any board or commission, shall disqualify himself from participating in a transaction involving the governmental entity when a violation of this Part would result. The procedures for such disqualification shall be established by regulations issued pursuant to R.S. 42:1134(1).

D. No appointed member of any board or commission, except as provided in R.S. 42:1120.1 and R.S. 42:1120.2, shall participate or be interested in any transaction involving the agency when a violation of this Part would result.

Acts 1979, No. 443, § 1, eff. April 1, 1980. Amended by Acts 1983, No. 697, § 1; Acts 1985, No. 426, § 2; Acts 1987, No. 370, § 1.

§ Y Prohibited contractual arrangements

A. No public servant, excluding any legislator and any appointed member of any board or commission and any member of a governing authority of a parish with a population of ten thousand or less, or member of such a public servant's immediate family, or legal entity in which he has a controlling interest shall bid on or enter into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the agency of such public servant.

B. Other than a legislator, no appointed member of any board or commission, member of his immediate family, or legal entity in which he has a substantial economic interest shall bid on or enter into or be in any way interested in any contract, subcontract, or other transaction

which is under the supervision or jurisdiction of the agency of such appointed member.

C. No legislator, member of his immediate family, or legal entity in which he has a controlling interest shall bid on or enter or be in any way interested in any contract, subcontract, or other transaction involving the legislator's agency.

Acts 1979, No. 443, § 1, eff. April 1, 1980. Amended by Acts 1984, No. 830, § 1; Acts 1987, No. 730, § 1.

§ 1114. Financial disclosure

A. Other than a legislator, each public servant and each member of his immediate family who derives any thing of economic value, directly, through any transaction involving the agency of such public servant or who derives any thing of economic value of which he may be reasonably expected to know through a person which (1) is regulated by the agency of such public servant, or (2) has bid on or entered into or is in any way financially interested in any contract, subcontract, or any transaction under the supervision or jurisdiction of the agency of such public servant shall disclose the following"

(1) The amount of income or value of any thing of economic value derived;

(2) The nature of the business activity;

(3) Name and address, and relationship to the public servant, if applicable; and

(4) The name and business address of the legal entity, if applicable.

C. The disclosure statements required in this Section shall be filed each year with the appropriate ethics body by May 1 and shall include such information for the previous calendar year. Such statements shall be a matter of public record.

Acts 1979, No. 443, § 1, eff. April 1, 1980.

§ 1114.1 [Blank]

A section designated as R.S. 42:114.1 was enacted by Acts 1982, No. 747, § 2. The section was redesignated as R.S. 42:1124 on authority of R.S. 24:253.

§ 1115. Gifts

A. No public servant shall solicit or accept, directly or indirectly, any thing of economic value as a gift or gratuity from any person or form any officer, director, agent, or employee of such person, if such public servant knows or reasonably should know that such person:

(1) Has or is seeking to obtain contractual or other business or financial relationships with the public servant's agency, or

(2) Is seeking, for compensation, to influence the passage or defeat of legislation by the public servant's agency.

B. No public employee shall solicit or accept, directly or indirectly, anything of economic value as a gift or gratuity from any person or from any officer, director, agent, or employee of such person, if such public employee knows or reasonably should know that such person:

(1) Conducts operations or activities which are regulated by the public employee's agency.

(2) Has substantial economic interests which may be substantially affected by the performance or nonperformance of the public employee's official duty.

Acts 1979, No. 443, § 1, eff. April 1, 1980. Amended by Acts 1983, No. 403, § 1; Acts 1987, No. 730, § 1.

§ 1116. Abuse of office

No public servant shall use the authority of his office or position, directly, or indirectly in a manner intended to compel or coerce any person or other public servant to provide himself, any other public servant, or other person with any thing of economic value. This Section shall not be construed to limit that authority authorized by law, statute, ordinance, or legislative rule in carrying out official duties.

Acts 1979, No. 443, § 1, eff. April 1, 1980.

§ 1117. Illegal payments

No public servant or other person shall give, pay, loan, transfer, or deliver or offer to give, pay, loan, transfer, or deliver, directly or indirectly, to any public servant or other person any thing of economic value which such public servant or other person would be prohibited from receiving by any provision of this Part.

Acts 1979, No. 443, § 1, eff. April 1, 1980.

§ 1118. Influencing action by legislature or governing authority

No public servant shall solicit or receive any thing of economic value, directly or indirectly, for, or to be used by him or a member of his immediate family principally to aid in, (1) the accomplishment of the passage or defeat of any matter affecting his agency by the legislature, if his agency is a state agency, or by the governing authority, if his agency is an agency of a political subdivision, or (2) the influencing, directly or indirectly, of the passage or defeat of any matter affecting his agency by the legislature, if his agency is a state agency, or by the governing authority, if his agency is an agency of a political subdivision.

Acts 1979, No. 443, § 1, eff. April 1, 1980.

§ 1119. Nepotism

A. No member of the immediate family of an agency head shall be employed in his agency.

B. No member of the immediate family of a member of a governing authority or the chief executive of a governmental entity shall be employed by the governmental entity, except that any local school board may employ any member of the immediate family of any board member or of the superintendent as a classroom teacher provided that such family member is certified to teach. Each member of a local school board which employs a member of the immediate family of a school board member or the superintendent shall recuse himself from any decision involving the promotion or assignment of teaching location of the employee.

C. (1) Any person serving in public employment on the effective date of this Section, whose employment is in violation of this Section,

may continue in such employment and the provisions of this Section shall not be construed to hinder, alter, or in any way affect normal promotional advancements in public employment for each employee.

(2) The provisions of this Section shall not prohibit the continued employment of any public employee nor shall it be construed to hinder, alter, or in any way affect normal promotional advancements for such public employee where a member of public employee's immediate family becomes the agency head of such public employee's agency, provided that such public employee has been employed in the agency for a period of at least one year prior to the member of the public employee's immediate family becoming the agency head.

(3) The provisions of the Section shall not apply to pilots appointed by the governor pursuant to R.S. 34:943, 34:992, 34:1043 and 34:1072.

D. A willful violation of this Section shall subject the agency head, member of the governing authority, or chief executive, as the case may be, the public employee having authority to hire and fire the employee, the immediate supervisor of the employee, and such employee, to disciplinary action and penalties provided by this Chapter.

Acts 1979, No. 443, § 1, eff. April 1, 1980. Amended by Acts 1982, No. 640, § 1.

§ 1120. Recusal from voting

A. If any elected official, in the discharge of a duty or responsibility of his office or position, would be required to vote on a matter which vote would be a violation of R.S. 42:1112, he shall recuse himself from voting. Notwithstanding the foregoing, an elected official shall not be required to recuse himself if he prepares and files the statement required by this Section as provided herein. In such case, the elected official shall prepare in writing a statement describing the matter in question, the nature of the conflict or potential conflict, and the reasons why, despite the conflict, the elected official is able to cast a vote that is fair, objective, and in the public interest. Such statement shall be filed within three days of the vote with the chief clerical officer of the respective house of the legislature, of the legislative committee,

of the governing authority, or of any other body in which the vote is taken, as the case may be, who shall cause the statement to be recorded in the official journal, minutes, or other official record of the body. In addition, the elected official shall be required to file a copy of such statement as it appears in such published or recorded official journal, minutes, or record, with the appropriate ethics body.

B. This Section shall not be applicable when the elected official is the sole decision-maker in the discharge of the particular duty or responsibility of his office or position.

C. This Section shall not extend to any act of participation other than voting.

Acts 1979, No. 443, § 1, eff. April 1, 1980. Amended by Acts 1988, No. 880, § 1.

§ 1120.1 Recusal from voting: Board of Commissioners of the Port of New Orleans

If any member of the Board of Commissioners of the Port of New Orleans, in the discharge of a duty or responsibility of his office or position, would be required to vote on a matter which vote would be a violation of R.S. 42:1112 or 1113(B), he shall recuse himself from voting.

Added by Acts 1985, No. 426, § 2.

§ 1120.2 Recusal from voting: Housing Authority Members

If a tenant of a housing authority who also serves as a member of the board of commissioners of that housing authority, in the discharge of a duty or responsibility of his office or position, would be required to vote on a matter which vote would be a violation of R.S. 42:1112, he shall recuse himself from voting.

Added by Acts 1987, No. 370, § 1.

§ 1121. Assistance to certain persons after termination of public service

A. No former agency head or elected official shall, for a period of two years following the termination of his public service as the head

of such agency or an elected public official serving in such agency, assist another person, for compensation, in a transaction or in an appearance in connection with a transaction, involving that agency.

B. General rule for other public employees. No former public employee shall, for a period of two years following the termination of his public employment, assist another person, for compensation, in a transaction, or in an appearance in connection with a transaction in which such former public employee participated at any time during his public employment and involving the governmental entity by which he was formerly employed, or for a period of two years following termination of his public employment, render, on a contractual basis to or for the agency with which he was formerly employed, any service which such former public employee had rendered to the agency during the term of his public employment.

C. No legal entity in which a former public servant is an officer, director, trustee, partner, or employee shall, for a period of two years following the termination of his public service, assist another person, for compensation, in a transaction, or in an appearance in connection with a transaction in which such public servant at any time participated during his public service and involving the agency by which he was formerly employed or in which he formerly held office.

D. No former public servant shall share in any compensation received by another person for assistance which such former public servant is prohibited from rendering by this Section.

E. Termination of public service. For the purposes of Subsections B and C of this Section, termination of public employment or service means the termination of employment with the agency in which an elected official served, when he participated in the transaction.

F. (1) Each officer and employee of the office of financial institutions, including the commissioner, shall be prohibited for a period of two years following the termination of his employment with the office of financial institutions from:

(a) Assisting another person for compensation in a particular transaction or in an appearance in connection with a particular transaction for which the officer or employee had responsibility to effec-

tively direct the action of the office of financial institutions at any time during his employment and which involves the office of financial institutions; or

(b) Rendering on a contractual basis to or for the office of financial institutions any service which the officer or employee rendered to the office of financial institutions during his employment there.

(2) However, the provisions of Paragraph (1) of this Subsection shall not apply to post-employment work done for or with a federally chartered agency regulating financial institutions or their holding companies.

(3) A legal entity in which a former officer or employee of the office of financial institutions is an officer, director, trustee, partner, or employee shall be prohibited for a period of two years following the termination of his employment, for assisting another person for compensation in a particular transaction or in an appearance in connection with a particular transaction for which such officer or employee had responsibility to effectively direct the action of the office of financial institutions at any time during his employment and which involves the office of financial institutions. This restriction shall not apply to a legal entity which is a federally chartered agency regulating financial institutions or their holding companies. Subject to the provisions of Paragraphs (1), (2), and (4) of this Subsection, such a legal entity may continue to participate in particular [omitted in printing].

§ 1122. Continuation in certain pension and other plans by public servants

A. Pension and benefit plans. A public servant may continue in a bona fide pension, insurance, or other benefit plan maintained by a former employer, provided that such former employer makes no contributions in his behalf with respect to the period of his public service. However, a former employer may make contributions to a pension plan that is qualified under the Internal Revenue Code or to any pension, insurance, or other benefit plan, if such contributions are made on behalf of all former employees who continue in the plan.

B. Profit sharing or stock bonus plans. The rights acquired by a public servant under a bona fide profit sharing or stock bonus plan qualified under the Internal Revenue Code and maintained by a former employer may be retained by such public servant, provided the former employer makes no contribution on his behalf based upon profits derived during the period of his public service.

Acts 1979, No. 443, § 1, eff. April 1, 1980.

§ 1123. Exceptions

This Part shall not preclude:

(1) Participation in the affairs of charitable, religious, nonprofit educational, public service, or civic organizations, bona fide organized public volunteer fire departments when no compensation is received, or the activities of political parties not proscribed by law.

Provided, however, that the Code of Governmental Ethics shall apply to the purchase of fire trucks by bona fide organized public fire departments.

(2) Awards for meritorious public contributions given by public service organizations.

(3) Sharing in any compensation received from the governmental entity by a person of which such public servant owns or controls any portion thereof, provided such compensation was received by such person as a result of having made the lowest sealed competitive bid on a contract or subcontract and having had such bid accepted by the governmental entity or the general contractor, and provided such public servant did not participate or assist in the procurement of the acceptance of such low bid, except as otherwise specifically prohibited by R.S. 42:1113.

(5) Campaign contributions for use in meeting campaign expenses by any public servant who is or becomes a candidate for election to the same or another public office.

(6) Any activity of any public employee of a public higher education institution in this state who is covered by the tenure policy of the Board of Regents or the tenure policies and the administration of the tenure policies by the three higher education management boards and which activity is required by either regional or professional

accreditation standards of organizations recognized by the Council on Post secondary Accreditation.

(7) The employment with the office of mental health of the Department of Health and Human Resources of a licensed physician who is a member of the psychiatric faculty of and compensated by Tulane University.

(8) Any individual employed in the maritime industry from serving as an appointed member of the Board of Commissioners of the Port of New Orleans.

(9)(a) The receipt of or sharing in the proceeds of any patent, copyright, licensing right, or royalty by faculty or staff members of a public higher education institution or management board resulting from any activity of the faculty or staff member, which is consistent with and pursuant to the mission of the college or university to advance knowledge or further the economic development of the state and which activity has been approved by the campus head and the management board of the employing college or university.

(b) The performance of services for compensation for any person, by faculty or staff members of a public higher education institution, provided the services consist of consulting related to the academic discipline or expertise of said public employee and provided the services have been approved in writing by the chief administrative officer of the public employee's institution in accordance with rules and procedures established by the management board of the institution, which rules and procedures have been approved by the Board of Regents and the Commission on Ethics for Public Employees.

(10)(a) The negotiation or entering into a contract as defined in Subparagraph (b) of this Paragraph, provided that such contract has been approved in accordance with a procedure established by the appropriate higher education management board which procedure has been approved by the Board of Regents and the Commission on Ethics for Public Employees. Such an approval procedure shall require a finding and certification by the appropriate management board to the Board of Regents that entering into such contract will contribute to the economic development of the state and that entering into such contract will not interfere or conflict with the employee's obligation to the university. Semiannually, the Board of Regents shall report all such

certifications to the committees on commerce of the Senate and House of Representatives or any subcommittee designated by either standing committee.

(b) A contract between an institution of higher education and a member of its faculty or a legal entity in which such employee has a substantial economic interest, regarding the disposition of any patent, copyright, licensing right, or royalty which is attached to a discovery, technique, or technology resulting from the research done by such employee in the course of his employment with the institution, or regarding an activity related to or resulting from the research activity of such employee conducted in the course of his employment with the institution.

(11) The employment with the office of prevention and public health services of the Department of Health and Human Resources of retired public health physicians by professional services contracts for part-time clinician services in parish health units. However, a yearly contract shall not exceed twenty percent of the retired employee's former salary. A retired physician shall be employed under this Paragraph only if there are no public health physicians available to perform the services.

(12) Any tenant of a housing authority, as defined in R.S. 40:382, from serving on the board of commissioners of that housing authority.

(13) The acceptance, by a legislator, of anything of economic value as a gift or gratuity from any person where the value of such gift does not exceed fifty dollars per event, up to an aggregate amount of three hundred dollars in a calendar year from any person, and where the nature of the gift is limited to a cultural or sporting event within the boundaries of this state including the territorial waters thereof, including the entertainment reasonably incident thereto; except that the provisions of this Paragraph shall also be applicable to legislators who are on official state business outside of the boundaries of this state as long as said legislators are entitled to per diem for such official business.

(14) Persons employed by public school systems to provide special education and related services pursuant to R.S. 17:1941 et seq. to exceptional children, as defined by R.S. 17:1943(1), from performing, on a private fee basis and outside of school hours, those same

special education and related services for their own students or any other persons eligible to receive such services from their school system during school hours, provided that the child's parents or guardian are advised in writing, of the procedures through which their child may be evaluated for eligibility to receive such services for free through the school system. With respect to any child already receiving such services for free through the school system, the notice shall explain the procedures through which the child's eligibility to receive additional services for free from the school system may be reviewed.

(15) The use by a duly commissioned law enforcement officer of a publicly owned law enforcement vehicle in connection with the private employment of such law enforcement officer in providing traffic control or security services for a private employer when such use is approved by and in accordance with the policy of the law enforcement officer's public employer, which policy shall be published in the official journal of the parish prior to becoming effective and shall provide for appropriate charges for the use of public vehicles for private employment.

§ 1124. Financial disclosure for the governor

A. Within thirty days after the date on which the governor enters upon the discharge of his duties as such, and annually thereafter, and within thirty days after the date on which the governor ceases to discharge the duties of his office, he shall file a financial statement, as provided in Subsection B of this Section.

B. (1) The financial statement required by this Section shall be filed on a form prescribed by the Louisiana Board of Ethics for Elected Officials and shall include the following information for the preceding calendar year:

(a) The full name and residence address of the individual who is required to file.

(b) The full name of the individual's spouse, if any, and the spouse's occupation and principal business address.

(c) the name, address, and nature of association with and the amount of interest in each business in which the individual or spouse is a director, officer, owner, partner, member, or trustee, or in which

the individual spouse, either individually or collectively, holds an interest worth in excess of ten percent.

(d) The name, address, type, and amount of each source of income, in excess of one thousand dollars, received by the individual or spouse, and the nature of the services rendered therefor, if any. For income derived from mental health, medical health, or legal services rendered, the individual need only show the amount of the income and not the identity of any individual patient or client.

(e) A brief description, location, and address of each parcel of real property, the fair market value of which exceeds two thousand dollars, in which the individual or spouse, either individually or collectively, has an interest.

(f) A brief description, amount, and date of any purchase, sale, exchange, donation, gift, or other acquisition or disposition, in excess of one thousand dollars, of any real property, and of any stocks, bonds, commodities futures, or other forms of securities, including by not limited to , any option to acquire and/or dispose of any stocks, bonds, commodities futures, other forms of securities negotiable instruments, movable or immovable property, or any other interest.

(g) The name, address, and amount of each liability owed to any creditor by the individual or spouse which exceeds ten thousand dollars, excluding any loan secured by a personal motor vehicle, household furniture, or appliances, if such loan does not exceed the purchase price of the item which secures it.

(2) When an amount is required to be disclosed pursuant to this Section, it shall be sufficient to report the amount by category of value. The categories shall be: (a) Category I, less than five thousand dollars; (b) Category II, $5,000-$24,999; (c) Category III, $$25,000-$49,999; (d) Category IV, $50,000-$99,999; (e) Category V, $100,000-$199,999; (f) Category VI, $200,000 or more. Amounts required to be disclosed shall be valued at actual or fair market value, whichever is greater.

(3) For purposes of this Section, the following words shall have the following meanings:

(a) "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, business, or-

ganization, self-employed individual, holding company, trust, or any other legal entity or person.

(b) "Income" means any income from whatever source derived, including but not limited to the following items: compensation for services, including fees, salaries, commissions, and similar items; income derived from business; gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from interest in an estate or trust.

(4) The financial statement shall be filed with the Louisiana Board of Ethics for Elected officials and shall be accompanied by the affidavit of the public official filing it certifying that the information contained in the financial statement is true and correct to the best of his knowledge, information, and belief. The financial statement shall be a public record, subject to the provisions of Chapter 1 of Title 44 of the Louisiana Revised Statutes of 1950.

(5) For the purposes of this Section, an individual or spouse shall not transfer any asset, interest, or liability required to be disclosed pursuant to Paragraph (1) of this Subsection to any person or business for the purpose of avoiding disclosure, unless such transfer is irrevocable. A transfer shall not be irrevocable if there exists any contract, letter, counter letter, note, or any other legally enforceable agreement or authority which if exercised or enforced would require or authorize any asset, interest, or liability transferred by an individual or spouse to a person or business to revert back to such individual or spouse.

C. Whoever fails to file a financial statement required by this Part, or knowingly and wilfully fails to timely file any such statement, or knowingly and wilfully fails to disclose or to accurately disclose any information required by this Part shall be guilty of a [omitted in printing] this Chapter or any order, rule, or regulation promulgated hereunder. Such action may include the imposition of the conditions described in Subsection B of this Section.

B. Enforcement as to former public servants and other persons. Upon a finding by the appropriate ethics body or a court of competent jurisdiction, that a former public servant or other person has violated

any provision of this Chapter or any order, rule, or regulation promulgated hereunder, the agency head or such ethics body shall bar or impose reasonable conditions upon:

(1) The appearance before such agency of such former public servant or other person.

(2) The conduct of, or negotiation or competition for, business with such agency by such former public servant or other person, for such period of time as may be necessary or appropriate to effectuate the purposes of this Chapter.

Acts 1979, No. 443, § 1, eff. April 1, 1980.

§ 1152. Rescission of action of a governmental entity

A. Subject to the limitations hereinafter set forth, an ethics body may cancel or rescind any contract of or permit or license issued by a governmental entity without liability to the governmental entity where:

(1) The ethics body has found that a violation of this Chapter within its jurisdiction has influenced the issuing of the permit or license or the making of such contract.

(2) The ethics body finds under all of the circumstances that the interests of the governmental entity so require; however, such rescission is to be limited so as to not adversely affect the interests of innocent third parties.

B. The finding referred to in R.S. 42:1152(A)(1) shall be made in accordance with the procedures set forth in R.S. 42:1141 and shall be subject to judicial review in accordance with the provisions of R.S. 42:1142, provided that the ethics body may suspend the contract, permit, or license of the governmental entity subject to the limitations of R.S. 42:1152(A)(2) pending the determination of the merits of the controversy.

Acts 1979, No. 443, § 1, eff. April 1, 1980. Amended by Acts 1988, No. 581, § 1.

§ 1153. Penalties

A. Upon finding that any elected official or other person has violated any provision of this Chapter, the board by a majority vote of the membership, may censure the elected official or person, or impose a fine of not more than five thousand dollars, or both.

B. Upon finding that any public employee or other person has violated any provision of this Chapter, the commission by a majority vote of the membership, may remove, suspend, or order a reduction in pay, or demotion of the public employee or other person, or impose a fine of not more than five thousand dollars, or both.

Acts 1979, No. 443, § 1, eff. April 1, 1980.

SUBPART B. PROCEDURE

§ 1141. Procedure

A. Complaints. (1) Each ethics body shall consider any signed sworn written complaint from any Louisiana elector concerning a violation of this Chapter which is within its jurisdiction and filed by the Louisiana elector. Such person must be willing to appear before the ethics body in public hearings to testify in support of his complaint. A copy of the complaint shall be mailed by certified mail to the party against whom it is filed within five days after it is filed.

(2) The commission may, by resolution adopted by a majority of its membership, consider any matter which it has reason to believe may be a violation of this Chapter within its jurisdiction or the regulations or orders issued by the commission. Once adopted, the resolution shall be signed by the chairman and a copy thereof shall be mailed by certified mail to the party against whom it is directed within five days after the resolution is adopted. The staff of the commission shall appear at private or public hearings to produce evidence in support of the resolution.

B. Investigation and hearing. Upon receiving a complaint, or, in case of the commission, adopting a resolution as provided in Subsection A, the ethics body shall first conduct a private investigation to elicit evidence upon which the ethics body could determine whether to conduct public hearings to receive evidence and to determine

whether any violation of this Chapter within its jurisdiction has occurred, and if a violation has occurred, to prescribe authorized penalties. All determinations in this Subsection shall be by a majority vote of the membership of the ethics body.

C. Location of hearings. (1) The board may conduct any hearings provided in this Section in the parish wherein the elected official or person alleged to have violated any provision of this Chapter resides, or in the parish of the official domicile of any office or employment held by the defendant or, with the agreement of the defendant, in the parish of domicile of the board.

(2) The commission may conduct any hearing provided in this Section in the parish wherein the public employee or person alleged to have violated any provision of this Chapter resides, in the parish of the official domicile of any office or employment held by the defendant, or in the parish of the domicile of the commission.

D. Procedure. (1) Any public servant or other person who is to be the subject of a public or private hearing shall be given written notification of the charges against him and of the time and place such hearing is to be held. Such notification shall not be less than sixty days prior to the date set for the hearing. Upon the request of a public servant or other person charged, the hearing may be held sooner.

(2) For purposes of an investigation or a hearing, each ethics body may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records which the ethics body deems relevant or material to the investigation or hearing. Such attendance of witnesses and the production of any such records may be required at any place designated by the ethics body at no cost to the public servant or other person charged as permitted by the rules of the ethics body.

Each ethics body shall adopt rules providing for discovery consistent with Chapter 3 of Title III of Book II of the Code of Civil Procedure, to the extent and in the manner appropriate to its proceedings.

(3) In case of contumacy or refusal to obey a subpoena issued to any public servant or other person, any district court of this state within the jurisdiction of which the inquiry is carried on, or within which said

public servant or other person is found, resides, or transacts business, upon application by the ethics body shall have jurisdiction to issue to such public servant or other person an order requiring him to appear before the ethics body and to produce evidence, if so ordered, or to give testimony touching on the matter under consideration. Any failure to obey such order of the court may be punished by the court as a contempt thereof.

(4)(a) If any public employee shall willfully refuse or fail to appear before an ethics body, or any court authorized to conduct any hearing or inquiry pertaining to the provisions of this Chapter, or having appeared shall refuse to testify or answer any question specifically, directly, and narrowly relating to the performance of his official duties on the ground that his testimony or answers would tend to incriminate him, or shall refuse to accept immunity from prosecution on account of any matter about which he may be asked to testify at any such hearing or inquiry, such action shall be grounds for dismissal or forfeiture of his office or position and if dismissed, he shall not be eligible thereafter for employment by the governmental entity for a period of five years, unless such reemployment is authorized by a majority vote of the membership.

(b) If any elected official shall willfully refuse or fail to appear before an ethics body, or any court authorized to conduct any hearing or inquiry pertaining to the provisions of this Chapter or having appeared shall refuse to testify or answer any question specifically, directly, and narrowly relating to the performance of his official duties on the ground that his testimony or answers would tend to incriminate him, or shall refuse to accept immunity from prosecution on account of any matter about which he may be asked to testify at such hearing or inquiry, such action shall be grounds for the board to prescribe the penalties provided by R.S. 42:1153(a) against such elected official.

(5) No disciplinary action shall be taken against a public servant or person by an ethics body unless it is determined by a majority vote of its membership that such public servant or other person has violated a provision of this Chapter within its jurisdiction at a public hearing conducted for that purpose.

(6) Any public servant or other person who is the subject of any hearing may have legal counsel, cross examine witnesses, call witnesses, and present evidence in his own behalf.

(7) Any public servant or other person who is the subject of any investigation shall be advised of his right to have an attorney present.

(8) Any witness other than the person who is the subject of the investigation or hearing may be accompanied by counsel at investigations or hearings, which counsel may advise the witness of his rights, subject to reasonable limitations to prevent obstruction of or interference with the orderly conduct of the investigation or hearing. His counsel may also submit proposed questions to be asked for his client.

(9) Any witness at any investigation or hearing, subject to rules and regulations promulgated by the ethics body, shall be entitled to a copy of his testimony when the same become important and relevant in a criminal proceeding or subsequent investigation or hearing provided that the furnishing of such copy will not prejudice the public safety or security.

(10) In making any official determination of whether any provision of this Chapter has been violated, the ethics body may only consider testimony given under oath and transcribed verbatim by a reporter.

(11) If the investigation of an ethics body fails to disclose any substantial evidence to support the charges, the ethics body shall make an official determination of its findings and thereupon close its file on the charges. The public servant or other person charged may require the ethics body to make an official determination of the validity of the charges against him.

UNIFORM LOCAL RULES

UNITED STATES DISTRICT COURTS

FOR THE

EASTERN DISTRICT OF LOUISIANA

MIDDLE DISTRICT OF LOUISIANA

WESTERN DISTRICT OF LOUISIANA

EFFECTIVE
May 15, 1989

1.03 Signing of Pleadings, Motions and other Papers

Every pleading, motion, or other paper presented for filing shall, in accordance with the Federal Rules of Civil Procedure, be signed personally by the local counsel in his or her individual name. In addition, counsel's name, address, telephone number and Attorney Identification Number shall be typed or printed under his signature. If the attorney is admitted to the bar of the Supreme Court of Louisiana, the Attorney Identification Number shall be the same as the number assigned by the Supreme Court of Louisiana. Otherwise, the Attorney Identification Number shall be the number assigned by this Court.

Documents filed by a party not represented by counsel shall be signed by the party and shall give the same information.

Each attorney and pro se litigant has a continuing obligation to apprise the Court of any address change.

1.04 Trial Attorney

If a law firm or more than one attorney represents a party, one attorney will be designated in the first pleading filed on behalf of that

party as "Trial Attorney" or "TA." This attorney may, but need not, be the attorney who personally signs pleadings.

The designated Trial Attorney will be responsible for the case and all notices and other communications with respect to it will be directed to the designated Trial Attorney, or to local counsel in the event a visiting attorney is designated as Trial Attorney. The designation of the Trial Attorney may be changed at any time by *ex parte* motion. If a party desired to change the Trial Attorney, the new Trial Attorney will be promptly designated.

1.05 Collateral Proceedings and Refiled Cases

Whenever a civil matter, commenced in or removed to the court, involves subject matter that either comprises all or a material part of the subject matter or operative facts of another action, whether civil or criminal, then pending before this or another Court or an administrative agency, or previously dismissed or decided by this Court, counsel shall append on a separate sheet of paper, to the front of the complaint, a list and description of all such actions then known to counsel and a brief summary of the relationship. If information concerning any such action or proceeding is obtained subsequent to the filing of the original pleading in the latter case, it shall be the duty of counsel obtaining such information to notify the Court and opposing counsel in writing of the information so received in the same manner.

1.051E Assignment of Collateral Proceedings & Refiled Cases

In order to promote judicial economy and conserve judicial resources, and to avoid the potential for forum shopping and conflicting Court rulings, all actions described in paragraph 1.05 shall be transferred to the section to which the matter having the lowest docket number has been allotted, unless the two judges involved determine that some other procedure is in the